TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 418

HAROLD H. HENNEFORD, THOMAS S. HEDGES AND T. M. JENNER, MEMBERS OF THE TAX COMMISSION OF THE STATE OF WASHINGTON, APPELLANTS,

vs.

SILAS MASON COMPANY, INC., WALSH CONSTRUCTION COMPANY, GUY F. ATKINSON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON

FILED SEPTEMBER 30, 1936.

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

In Equity. No. E-4473

SILAS MASON COMPANY, INC., WALSH CONSTRUCTION COMPANY, Guy F. Atkinson, George H. Atkinson, William E. Kier and Elmer L. Kier, Copartners as Atkinson-Kier Company, and Mason-Walsh-Atkinson-Kier Company, Plaintiffs,

vs.

HAROLD H. HENNEFORD, THOMAS S. HEDGES and T. M. JENNER, Members of the Tax Commission of the state of Washington, Defendants

BILL OF COMPLAINT—Filed June 5, 1936

For cause of action plaintiffs allege:

1. Plaintiff Silas Mason Company, Inc. is a corporation organized and existing under the laws of the state of Delaware, and is a citizen and resident of such state. Plaintiff Walsh Construction Company is a corporation organized and existing under the laws of the state of Iowa, and is a citizen and resident of such state. Plaintiff Atkinson-Kier Company is a copartnership consisting of Guy F. Atkinson, George H. Atkinson, William E. Kier and Elmer L. Kier, all of whom are citizens and residents of the state of California. Plaintiff Mason-Walsh-Atkinson-Kier Company is a corporation organized and existing under the laws of the state of Delaware, and is a citizen and resident of that state. The defendants Harold H. Henneford, Thomas S. Hedges and T. M. Jenner constitute the Tax Commission of the state of Washington, and in all things herein complained of against them they have assumed and are assuming to act as the Tax Commission of the state of Washington. The defendant Thomas S. Hedges is a resident of the eastern district of Washington. This suit is brought to prevent the sale of and to remove a cloud upon the title to personal property which is situated within that district.

[fol. 2] 2. The cause of action pleaded arises from the effort of the defendants to tax plaintiffs and their operations while engaged in the construction of a dam across the Columbia River for the United States. The antecedents and circumstances of the dam construction are as follows: Extending over a period of a good many years there has been continual agitation in the Pacific northwest for the improvement and development of the resources of the Columbia River and of the Snake River, its principal tributary, including the betterment of those streams for purposes of navigation, prevention of damage from floods along the lower reaches of the Columbia River, the generation of electrical power from their waters, and the irrigation of arid lands along their courses. The source of the Columbia River is in lakes in British Columbia, and these and the river itself are fed from mountain streams and lakes of the Rocky Mountains in both Canada and the United States. Above its lower reaches, the river partakes of the character of a mountain stream, its fall being great, its current swift, and its course marked at intervals by rapids flowing over and through rocky masses of such magnitude as to render navigation difficult and in many instances impossible save by the construction of canals and locks. The alternations in its flow are great, its period of high water depending for time and intensity upon the melting snow in the mountains where are its sources. Its principal tributary is the Snake River, whose waters are drawn from the Bitter Root and Rocky Mountains in Idaho and Montana. The Snake River has the same characteristics as the Columbia River. With improvements that have been made and are contemplated, the Columbia is commercially navigable from its mouth to the mouth of the Snake, and the Snake from its junction with the Columbia to a point a short distance above the confluence of the Snake and Clearwater. Above the mouth of the Snake, the Columbia is navigable locally, from pool to pool, as far as the mouth of the Okanogan River. All such navigation is difficult and is not commercially feasible under existing [fol. 3] conditions because of the alternations in the flow of the stream, its great fall and consequent swiftness of current, and the rapids and obstructing masses of rock which so frequently dot its course. The same character-

istics which impair or destroy the navigability of the Columbia, render it an ideal stream for the development of hydroelectric power. For the greater part of its length within the United States, the Columbia flows through an arid country, the land being immensely productive when placed under irrigation, but of no value without irrigation.

The agitation heretofore referred to bore fruit some years ago in an extended and detailed survey of the Columbia River and its principal tributaries by the Corps of Engineers of the War Department, and in 1932 the Chief of Engineers of the United States Army recommended a comprehensive plan for the improvement and development of the Columbia River within the United States. This recommendation took into consideration the improvement of the river and the use of its waters for the purposes of navigation, flood control, power development, and irrigation. It recommended the construction of ten dams across the river at various points within the state of Washington and where the river is the boundary between Washington and Oregon. The uppermost of these dams, and the one which was of a prime importance in the whole plan of development, was located at the head of Grand Coulee, Washington, a point wholly within the state of Washington, about 150 miles below the International boundary line and 274 miles above the mouth of the Snake River. The estimated cost of the entire improvement recommended by the engineers was between $700,000,000 and $800,000,000, of which the Grand Coulee Dam, completed for the production of power and irrigation purposes, would represent a cost of approximately $200,000,000. That dam would create a lake 150 miles long extending to the international boundary, afford irrigation facilities for 1,200,000 acres of irrigable land, admit of the production of electrical power at a lower cost than it would be produced at any other point in the United States, control the flow of flood waters and [fol. 4] give storage facilities for the smaller dams below it, and benefit the lower reaches of the river for purposes of navigation and flood control. Another dam recommended was one at Bonneville, which has since been constructed.

Of the Grand Coulee Dam and its circumstances, Mr. Frank A. Banks, Engineer in charge of the construction

for the United States of the Grand Coulee Dam, has written:

"Rising in the Canadian Rockies and crossing the international border into the state of Washington near the northeast corner thereof, the Columbia River, the second largest river in this country in point of runoff, then flows for 750 miles through this state and along its southern border to the Pacific Ocean, falling on its way 1300 feet and earning for itself the distinction of being by far the largest river in this country in point of potential power, susceptible of economic development.

"Adjacent to this river in Central Washington is a tract of 1,200,000 acres of what has been many times referred to as the finest body of undeveloped arid land in the West. Unproductive and of little value in its present state, this land when irrigated will produce a great variety of agricultural, horticultural, livestock, dairy and poultry products in abundance and provide homes, employment and business for a vast agrarian and urban population. The combination of these great resources—water, power and land—for the creation of the Columbia Basin Project has been the goal of the people of Washington for the past 30 years or more. • • •

"The comprehensive plan for the development of the Columbia River as worked out by the Army Engineers, contemplated the construction of 10 dams to utilize 92% of the available fall in the river between the International Boundary and the Pacific Ocean. By far the largest and most important of these is the Grand Coulee Dam—largest in that it utilizes 355 feet or 27% of the total available fall and includes an installation of 1,890,000 KW capacity, which is larger than any existing development in the world today and most important in that it creates a storage reservoir of over 5,000,000 acre feet of usable capacity at the highest possible point on the river in this country and affords the most feasible and practicable means of diverting the waters of the Columbia River out of its canyon and on to any considerable area of arid land."

The above statements are adopted by plaintiffs, and are alleged as facts for the purposes of the cause of action pleaded.

3. Following upon the recommendations of the Chief of Engineers, the Department of the Interior, Bureau of Reclamation, prepared specifications for the construction of a dam across the Columbia River, at the head of Grand [fol. 5] Coulee, Washington, the point designated in the recommendations of the Chief of Engineers as the most suitable place for the construction of the uppermost of the dams referred to in his report. Bids for the construction of the dam were called for, and plaintiffs (other than the Mason-Walsh-Atkinson-Kier Company) bid on the work and their bid was accepted. Upon, to wit, July 16, 1934, a contract was entered into between the United States of America, party of the one part, and the plaintiffs (other than the Mason-Walsh-Atkinson-Kier Company), parties of the other part, whereby the second parties agreed to furnish some of the materials and to perform work required for the construction of the naked dam and power plant in accordance with Items 1 to 85, inclusive, of the schedule of Specifications 570, Columbia Basin Project. Plaintiffs were to receive as consideration for performance of the work, and for such materials as were to be supplied by them, the total sum of $29,339,301.50. The contract permitted substantial changes to be made in the plans and specifications by the United States, and in addition to a number of minor changes a major change has been made in the plans for construction since the beginning of the work which has increased the amount of the agreed contract price by over $7,000,000. The construction of the dam was authorized, and the proceedings taken with respect thereto were ratified by the Rivers and Harbors Bill of the 74th Congress, whereby Congress, among other things, provided:

"That for the purpose of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indiana reservations, and other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertakings, the projects known as 'Parker Dam' on the Colorado River and 'Grand Coulee Dam' on the Columbia River, are hereby authorized and adopted, and all contracts and agreements which have been executed in connection therewith are hereby validated and

ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts including contracts amendatory of or supplemental to those hereby validated and ratified."

[fol. 6] 4. Each of the plaintiff organizations is not only a nonresident of the state of Washington, but each has no other business and is engaged in no other operation in that state than the construction of the Grand Coulee Dam. Each organization (other than the Mason-Walsh-Atkinson-Kier Company) is engaged in independent business enterprises on its own account in widely separated parts of the United States. None of these business enterprises has any connection with or relation to the construction of the Grand Coulee Dam or to any other enterprise being conducted by any other plaintiff. Plaintiffs (other than the Mason-Walsh-Atkinson-Kier Company) entered into a joint contract for the construction of the Grand Coulee Dam, and for accounting and administrative purposes it was necessary to constitute a creature which should represent all of them in the prosecution of the work on that structure alone. To that end they caused the plaintiff Mason-Walsh-Atkinson-Kier Company to be organized as a corporation under the laws of the state of Delaware, directly or through their agents taking all the capital stock of that corporation and furnishing all its officers. Any assignment or other transfer of the contract with the United States was forbidden by Section 15, Title 41, U. S. C A. (R. S., Sec. 3737), and the plaintiffs who had contracted with the United States entered into an agreement with the plaintiff Mason-Walsh-Atkinson-Kier Company by which that Company was to act as their agent in the construction of the dam and the performance of all things required of them by their contract with the United States. From the beginning and at every step in its progress the work on the Grand Coulee Dam has been done by the contracting plaintiffs' agent and alter ego, the Mason-Walsh-Atkinson-Kier Company, and through the officers and agents whom they have placed in charge of it, the contract with the United States is being performed. They alone are responsible for the performance of the contract, they

have given bond in the sum of $5,000,000 for its performance, and they alone will profit or lose through its per-
[fol. 7] formance; the corporation Mason-Walsh-Atkinson-Kier Company being merely an entity brought into being by them for the more convenient doing of the work under the contract. In speaking hereafter of things done by plaintiffs in the performing of the contract or dealings in connection therewith, it is to be understood that the particular action was taken directly and in fact by the Mason-Walsh-Atkinson-Kier Company, but that its action was taken as the agent of the other plaintiffs; hence the allegation will be that it was done by the plaintiffs without distinguishing between them.

5. The construction work required of plaintiffs by their contract with the United States is one of unusual magnitude. It exceeds any work of similar character ever undertaken in the United States. Concerning this subject, Mr. Banks, the United States Engineer in charge of the construction, has said:

"The Grand Coulee Dam is often referred to as the 'key' structure in the comprehensive plan for the development of the Columbia River and one of the principal reasons for this lies in the fact that it creates a reservoir of over 5,000,000 acre feet of usable capacity, extending to the Canadian border, a distance of 150 miles, thereby adding a corresponding amount to the navigable inland waters of the state. Furthermore, the release of the stored waters from this reservoir during periods of low flow, not only increases the minimum, navigable channel depths by two (2) feet below Bonneville Dam and by 4.5 feet below Grand Coulee Dam with corresponding increases at intermediate points; but it also doubles the amount of firm power that can be developed at the six (6) power sites on the Columbia River between Grand Coulee Dam and the point where the Snake River joins the Columbia and increases by fifty (50%) per cent the firm power that can be generated at the various sites including Bonneville below this point. It becomes quite evident therefore why the Grand Coulee Dam is referred to as the key structure in the development of the comprehensive plan, and why its construction has been authorized as an initial step therein.

"* * * The dam will be 4,300 feet long, 550 feet high above the lowest bed rock and 500 feet thick at the base. It will have a spillway 1,650 feet long capable of handling a one million second foot flood. The volume of concrete required will be 11,000,000 cubic yards or two and one-half times that required for the Boulder Dam. The power installation sym-etrically placed on each side of the spillway will amount to 1,980,000 KW. of which 800,000 KW. will be for the generation of firm continuous power and the balance for secondary power for irrigation pumping and for standby service. Present contracts call for the completion of the foundation for the dam and power house to an average elevation about 50 feet above low water and involves among other things, the excavation of 15,000,000 cubic [fol. 8] yards of earth and rock and the placing of 3,500,000 cubic yards of concrete. The cost of this work including camp, railroad, highway, right of way, materials, etc., will be about $63,000,000. The cost of the completed structure is estimated at $186,000,000 and the irrigation features of the project $208,000,000, making a total of $394,000,000, but the maximum investment in the project is estimated at around $260,000,000, depending upon how rapidly the irrigation features are developed and how soon the power revenues may become sufficient to take care of the cost of future construction."

That statement is adopted by plaintiffs and is alleged as a fact for all the purposes of this action.

The dam is situated in a solid granite canyon created by the Columbia River, where the immense volume of the stream, flowing with almost irresistible force, especially during the high water period, and the physical conditions generally, require unusual methods and unusual implements of construction. In preparing for the work, plaintiffs adopted the policy of purchasing all machinery, materials and supplies required for the work in the state of Washington when the desired articles could be obtained in that state upon equal or relatively equal terms with which such articles could be obtained in other states. The character of the needed machinery and goods was such that a large part could only be obtained from manufactories in the industrial centers of the eastern part of the United States, or from branches on the Pacific Coast, these being generally established at San Francisco or Los Angeles, in

California, or Portland, in Oregon. Work on the dam was begun in 1934, and before its commencement, and frequently since that time, plaintiffs have been obliged to purchase machinery, materials and supplies in states other than Washington because the desired goods could not be obtained in that state, or could only be obtained on relatively unfavorable terms.

6. The Legislature of the state of Washington at the 1935 Legislative session enacted a general Revenue Act which contained many unique features, departing in substantially [fol. 9] all its features from previous provisions for raising revenue in that state, and in several from any theretofore known in the United States. This enactment is Chapter 180, Session Laws of Washington, 1935. By Title III of that Act it provided for a tax on retail sales within the state, and by Title IV for what is called a compensating tax, which is in effect a tax upon purchases made by persons within the state of Washington in other states of the Union. Reference to those titles is prayed for all the purposes of this complaint. Purporting to act under the authority of section 208 of the Revenue Act, the defendants, acting as the Tax Commission of Washington, have issued sundry rules and regulations relating to the various taxes provided by the Act and their collection. Respecting Title IV, such rules and regulations provide, among other things, as follows:

"Statement of the Nature of the Tax.—The Compensating Tax (Title IV) was enacted to supplement the Retail Sales Tax by imposing a like tax for privilege of using within this state tangible personal property purchased at retail subsequent to April 30, 1935 (the effective date of the Retail Sales Tax law) and in respect to which property neither a sales tax nor a use tax equal to 2% has been imposed by this or any other state.

"The primary purpose of the Compensating Tax is to protect the merchants of Washington from discrimination arising by reason of the inability of the state, because of the Federal Constitution, to impose a tax upon sales made to residents of this state by competitive merchants in other states.

"In general, the Compensating Tax applies upon the use of any property, the sale of which would have been

subject to the Washington sales tax had it been purchased within the state. Conversely, it does not apply upon the use of any property, the sale of which has been subjected to the Washington sales tax. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, provide a uniform tax upon either the sale or use of all tangible personal property, irrespective of where it may have been purchased."

"The Tax Does Not Apply in Respect of the Use of.—(1) Tangible personal property brought into the state by a non-resident for his use or enjoyment while temporarily within the state, unless such property is for use in conducting a non-transitory business activity within the state; * * *"

"Computation of Tax.—The tax imposed shall be levied [fol. 10] and collected in an amount equal to the purchase price paid by the taxpayer, multiplied by the rate of 2%. The term 'purchase price' means the consideration paid or given or contracted to be paid or given to the seller and, in addition thereto, the actual cost of transportation from the place where purchased to the person using the same in this state, but not exceeding the usual and ordinary cost of transportation of like property to a person dealing therein."

"A non-resident of the state of Washington is not subject to the Compensating Tax with respect to tangible personal property brought into the state of Washington for his personal use or enjoyment while temporarily within the state.

"This exemption does not extend to a non-resident engaged in business within the state who purchases tangible personal property for use or consumption in conducting such business.

"Where a non-resident purchases tangible personal property in a foreign state and later brings such property into the state of Washington, the Compensating Tax will apply unless the following conditions are conclusively established:

"(1) That the property when purchased was intended for bona fide use outside the state of Washington;

"(2) That the first actual use of the property was outside the state of Washington;

"(3) That the first actual use of the property outside the state was substantial and constituted the primary use for which the property was purchased.

"The burden of proof rests upon the purchaser, and until the above facts are established to the satisfaction of the Tax Commission it will be presumed that the use of such property is subject to the Compensating Tax."

7. Prior to the enactment of the aforesaid Revenue Act, plaintiffs had purchased in other states than Washington much heavy equipment and machinery generally which were necessary for the construction of the Grand Coulee Dam under plaintiffs' contract with the United States. The character of the work done requires frequent repairs and replacements of such equipment and machinery, and these repairs and replacements cannot be obtained within the state of Washington but must be purchased in other states. They make up a considerable item in the whole amount of goods purchased in other states by plaintiffs in the progress of the work. During the months of May and [fol. 11] June 1935 plaintiffs purchased within the United States outside the state of Washington locomotives, cars, compressors, conveyors, pumps, bridges, trestle steel, steel for general construction purposes, repair parts, replacement parts, and articles of the hundred and one different character which are required for the prosecution of a work of such magnitude as that upon which plaintiffs are engaged. The total amount of such purchases during the aforesaid two months was $899,390.91, and the transportation costs upon such purchases was $21,798.43. Substantially all such purchases consisted of articles which either could not be purchased at retail within the state of Washington, or were only purchasable there at a considerably higher price than that for which they could be purchased in other states in the Union. All the articles so purchased were purchased to be used, and were brought into the state of Washington and used, in and about and for the purposes of the construction of the Grand Coulee Dam under plaintiffs' aforesaid contract with the United States.

8. The defendants, purporting to act as the Tax Commission of the state of Washington, and proceeding in its name and under its authority, assert that plaintiffs are subject

to the payment on account of such purchases of the compensating tax which is provided for under Title IV aforesaid. Proceeding under such name and under the guise of such authority, the defendants have made the following written demand upon plaintiffs:

"Mason-Walsh-Atkinson-Kier Company, Mason City, Washington.

GENTLEMEN:

We have been advised that during the months of May and June, 1935, the Mason-Walsh-Atkinson-Kier Company purchased at retail and used within the state of Washington various and sundry articles of tangible personal property, the sale or use of which had not theretofore been subjected to the payment of any tax by the state of Washington or by any other state, the total purchase price of which amounted to $899,390.91, exclusive of transportation costs. We have also been advised that transportation [fol. 12] costs in connection with said purchases for said two months period amounted to $21,798.43.

We hereby make formal demand that you pay to the tax commission of the state of Washington on or before May 1, 1936, the sum of $18,423.78, the same being compensating tax at the rate of 2% due and payable to the state upon the amounts above set forth under the provisions of Title IV, chapter 180, Laws of 1935.

Demand is also hereby made upon you for payment on or before May 1, 1936, of a like tax upon all articles of tangible personal property purchased at retail between the dates July 1, 1935, and February 29, 1936, inclusive, and used by you in the state of Washington, the sale or use of which had not, prior to your purchase thereof, been subjected to a tax by this or any other state equal to 2% of the purchase price thereof.

You are advised that tax liability under Title IV, Chapter 180, Laws of 1935, arises at the time tangible personal property is put to use within the state of Washington. Such property is put to use by the first act after delivery is completed within the state by which the article purchased is actually used or is made available for use with intent actually to use the same within the state. The term 'made available for use' means and includes the exercise of any

right or power over tangible personal property preparatory to actual use within the state, such as keeping, storing, withdrawing from storage, moving, installing or performing any act by which dominion or control over the property is assumed by the purchaser.

In the event that the foregoing demand is not complied with on or before the date specified, we shall be compelled to take the proper steps for the recovery of the full amount of taxes due.

Very truly yours, Tax Commission of the State of Washington, by T. M. Jenner, Commissioner."

EWA:K.

Plaintiffs deny liability for the payment of the taxes therein specified, and defendants threaten to and will, unless restrained by order of this court, proceed under authority of section 35, Title IV, and section 202 of Title XVIII, both of the aforesaid Revenue Act, to cause the seizure and sale of the property purchased by plaintiffs without the state of Washington as hereinbefore alleged. The seizure and sale of such property would disrupt the complicated structure and plans under which the construction of the Grand Coulee Dam is progressing, would [fol. 13] render it impossible for plaintiffs to proceed with the execution of the contract, would do them irreparable injury, and would embarrass and greatly delay the prosecution and completion of the governmental work of the United States. Plaintiffs have no speedy and adequate remedy at law for the wrongs contempated and threatened by defendants, and their only recourse is to pay the unjust and void taxes demanded of them if they shall not procure a remedy in this court. Furthermore, the work upon which plaintiffs are engaged will be in progress for upwards of two years, and from time to time in its progress plaintiffs will be required, or desire, to purchase machinery and materials necessary in construction of the dam, outside the state of Washington, and unless it be held in this action that taxes accruing on account of such purchases under Title IV aforesaid are illegal and unenforcible, defendants will from time to time make demand upon plaintiffs for the payment of a tax on account of such purchases, and will seek to compel payment of such taxes by seizure and sale of any property so purchased.

9. Plaintiffs aver that the tax which defendants seek to collect from them as hereinbefore alleged is illegal and unenforcible against plaintiffs for the following reasons:

(a) The construction of the dam upon which plaintiffs are engaged under their contract with the United States is a governmental work of great magnitude, in the prosecution of which the executive department of the United States is exercising a franchise granted by the Congress to construct a dam across the Columbia River, a navigable stream, to the end that navigation may be improved, flood control effected, and the irrigation of public lands be made possible. In the exercise of this franchise and the prosecution of this governmental work plaintiffs are employed as agencies and instrumentalities of the United States. The machinery, materials and supplies purchased by plaintiffs without the state of Washington and used by them within [fol. 14] such state, on account of which the litigated tax is proposed to be collected, are used in, upon and about the construction of the aforesaid dam on behalf of the United States. Plaintiffs charge that the imposition of a tax for such use is in effect the imposition of a tax upon the use of the machinery, materials and supplies by the United States in the construction of a public work, and that under and by virtue of the fundamental principles on which the Union is constituted, the state of Washington is without power to levy a tax upon such use, and that the tax sought to be enjoined is illegal under the Constitution of the United States.

(b) Only a relatively small number of the states in the Union have provisions for a sale or use tax of the character indicated by subdivision (c) of section 32, Title IV of the Revenue Act aforesaid. Plaintiffs are informed and believe and upon such information and belief allege the fact to be that the following tabulation shows the states having such a tax, and the amount of the tax, towit: Arizona 2%; Arkansas 2%; California 2½% to 6-30-35; 3% thereafter; Colorado 2%; Connecticut has a gross receipts tax on incorporated businesses at the rate of $1 for each $1,000 or fraction thereof of the gross income of retail merchants; Delaware has a merchant's license tax at the rate of 1/10th of 1% of the aggregate contract value of merchandise purchased during the year; Idaho 2%; Illinois 2% to 6-30-35; 3% thereafter to 12-31-36; then 2% thereafter; Indiana 1% of retail sales to customers; Iowa 2%; Kentucky 3% on

gross receipts of sales by retail merchants; Maryland 1%; West Virginia gross income tax of ½ of 1% on retailers, and also a sales tax at 2%; Michigan 3%; Wyoming 2%; Mississippi 2%; Missouri ½ of 1% to 8-26-35; 1% thereafter; New Jersey 2% after 7-1-35; North Carolina 3%; North Dakota 2%; Ohio approximately 3%; Oklahoma 1%; Pennsylvania merchants' license tax on retailers at $2 plus $1 on each $1 of gross sales during preceding year; South Dakota 2%; Utah 2%. It will be observed that the greater number of the states in the eastern part of the United [fol. 15] States, where plaintiffs' principal purchases of heavy machinery, equipment, repairs and replacements, etc. are made, have no provision for such a tax.

The purpose of the provisions of Title IV aforesaid requiring the payment of a compensating tax is to impose such a burden upon persons purchasing personal property for use in the state of Washington in other states than Washington, as will prevent or discourage the purchase of personal property in other states and compel or induce purchases within the state of Washington of all personal property that is to be used in that state. It is, in effect, an impost upon goods purchased and shipped in from other states to be used in the state of Washington, and is illegal and void because it is a burden upon interstate commerce forbidden by section 8, clause (3) of Article I of the Constitution of the United States.

(c) The aforesaid Title IV is void in that it attempts to regulate commerce among the several states in violation of Article I, section 8, Clause (3), of the Constitution of the United States. Its enforcement would have the effect (1) to discourage persons residing or having occasion to be or go in the state of Washington from purchasing goods at retail outside that state which they desire to use or enjoy in it, (2) to extend the financial policy of that state and its method of raising revenue to other states by imposing a tax upon goods purchased in such states equivalent to that which would be imposed by that state, (3) to cause discrimination in purchases between states which have and those which have not a tax on retail sales similar to that of the state of Washington, and (4) by including cost of transportation as a part of the purchase price, to induce persons in the state of Washington who are obliged or desire to purchase goods outside of that state, to purchase in

states nearest it an penalty of paying a higher cost for transportation if they make their purchases in more remote states.

(d) Title IV abridges the privileges and immunities of [fol. 16] plaintiffs, who are citizens of the United States, in violation of the Fourteenth Amendment to the Constitution of the United States, in that it imposes a penalty upon them for purchasing goods in states where they may be obliged or may desire to obtain them, and by such penalty compels or induces them either to purchase in the state of Washington or in states nearest to that state.

(e) Title IV is also void in that it seeks to deny to plaintiffs the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, for that it imposes a penalty upon plaintiffs for goods purchased in states where they may be obliged or may desire to obtain them, and by such penalty compels or induces them either to purchase in the state of Washington or in states nearest to that state.

(f) Plaintiffs are citizens and residents of states other than Washington. They are within the state of Washington solely for the purpose of discharging their contract obligations with the United States. All machinery, materials and supplies purchased by them and used within the state of Washington were purchased and brought within the state and used there solely in the performance of plaintiffs' contract with the United States, and all such machinery, materials and supplies will be used and enjoyed by plaintiffs only while they are within the state of Washington and for the purposes of the contract aforesaid. A great part of the machinery purchased will be destroyed or rendered worthless by its use in the construction of the Grand Coulee Dam, and such as retains value will, upon the completion of the contract with the United States, be removed from the state of Washington and will cease to be used in that state; or, if any of such equipment and machinery should then be sold by plaintiffs prior to such removal, it will thereby and thereupon become subject to any retail sales tax of the state then in effect which may be levied upon sales of goods while within the state. By virtue of Clause (a), section 32, Title IV of the Revenue Act afore- [fol. 17] said, the tax which defendants are seeking to en-

force is not imposable upon purchases made by plaintiffs under the circumstances aforesaid.

(g) Because plaintiffs are only temporarily within the state of Washington and are there for the purpose of performing a contract with the United States, whereby the United States receives the benefit of a public franchise and is enabled to discharge a governmental duty, they are not taxable for the privilege of using goods wherever purchased in the discharge of their obligations to the United States.

(h) By chapter 18, Laws of Washington 1891 (Rem. Rev. Stat., Sec. 8108), the state of Washington consented to the acquisition by purchase or by condemnation by the United States of America of tracts, pieces and parcels of land within the boundaries of the state for the sites of locks, dams, piers, breakwaters, keepers' dwellings and other necessary structures and properties required in the improvements of the rivers of the state or bordering thereon, and ceded to the United States of America the jurisdiction of the state over all such land or lands as might be acquired by purchase or by condemnation or set apart by the general government for any of the purposes mentioned, such consent being given in accordance with the 17th clause of the 8th section of the first Article of the Constitution of the United States and with the Acts of Congress in such cases made and provided. The United States acted under such consent and cession in acquiring lands upon which are situated the Grand Coulee Dam and power plant whereon the work required of plaintiffs under their aforesaid contract with the United States is in progress. Such action and acquisition constituted a contract between the state of Washington and the United States by which the United States became possessed of exclusive jurisdiction for taxation purposes over the lands so acquired, and plaintiffs, by reason of their contractual relation to the United States and the necessity for discharging their contractual obligations upon the lands so acquired by the United States, are [fol. 18] entitled to the benefit of the contract.

Wherefore, plaintiffs pray an adjudication that as against them the provisions of Title IV, of chapter 180, Session Laws of Washington, 1935, are null and void; that the tax

of which defendants are claiming payment is illegal and unenforcible against plaintiffs; that such asserted tax be removed as a cloud upon the title to the personal property purchased by plaintiffs outside the state of Washington and used in the prosecution of the work described in the complaint, and that defendants be enjoined and perpetually restrained from enforcing or attempting to enforce the collection of such tax from plaintiffs or by the sale of their property. Plaintiffs further pray the issuance of an interlocutory injunction preventing defendants from proceeding to collect the tax as demanded by them, and that a court be constituted to hear plaintiffs' application for an interlocutory injunction at a time fixed by the court. Plaintiffs pray the issuance of a subpœna and such other and further relief as may be meet and equitable.

Graves, Kizer & Graves, Attorneys for Plaintiffs.
W. G. Graves, Solicitor.

Duly sworn to by T. J. Walsh. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed June 5, 1936

Plaintiffs apply for an interlocutory injunction in this cause restraining defendants from levying upon the personal property described in the complaint or otherwise enforcing the provisions of Title IV, Chapter 180, Session Laws of 1935 of the state of Washington, pending the trial of this cause.

This application will be heard upon plaintiffs' verified complaint and upon such affidavits as plaintiffs may serve and file herein in accordance with the order of the court in that behalf.

Dated at Spokane, Washington, June 5th, 1936.

Graves, Kizer & Graves, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed June 5, 1936

Upon the presentation of the verified complaint in this cause,

It is Ordered that defendants, and each of them, appear in this court at Spokane, Washington, at 10 o'clock a. m., on the 19th day of June, 1936, before a statutory court as in such cases provided and show cause why plaintiffs' complaint for an interlocutory injunction restraining defendants from levying upon the personal property described in the complaint, or from otherwise enforcing Title IV, Chapter 180, Session Laws of 1935 of the state of Washington, pending trial of this cause, should not be granted.

It is Further Ordered that plaintiffs immediately serve each of the above named defendants by mail with a copy of the complaint and a copy of this order, and that defendants serve plaintiffs with a copy of such motions or pleadings as they may desire to present in this cause at least ten days prior to said June 19, 1936.

It is Further Ordered that plaintiffs' application for an interlocutory injunction be heard on their verified complaint and such affidavits, if any, as plaintiffs may desire to submit; that in the event plaintiffs desire to submit affidavits they shall serve copies thereof by mail upon the [fol. 21] defendants at least ten days prior to the date herein fixed for the hearing of the application for an interlocutory injunction. In the event that defendants desire to submit affidavits upon the hearing they shall serve copies thereof upon the attorneys for the plaintiffs at least three days prior to the date set for the hearing of the application for the interlocutory injunction.

Dated at Spokane, Washington, this 5th day of June, 1936.

J. Stanley Webster, Judge.

[File endorsement omitted.]

[fol. 22] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ASSEMBLING THREE-JUDGE COURT—Filed June 13, 1936

It appearing to the Court that the above entitled cause is one requiring the presence of a statutory court consisting of three judges, one at least of whom shall be a Justice of the Supreme Court or a Circuit Judge, as required by Title 28, Section 380 U. S. C.

Now, Therefore, in virtue of said statute I hereby call to my assistance to hear and determine the above entitled cause the Honorable Bert Emory Haney, United States Circuit Judge for the Ninth Circuit, and the Honorable Charles C. Cavanah, United States District Judge for the District of Idaho, who together with the undersigned shall constitute the statutory court for the purpose of hearing and determining the above entitled cause.

Done this 13th day of June, 1936.

J. Stanley Webster, United States District Judge.

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF COMPLAINT, ETC.—Filed June 5, 1936

To His Excellency Clarence D. Martin, Governor of the State of Washington, Honorable George W. Hamilton, Attorney General, and to Harold H. Henneford, Thomas S. Hedges, and T. M. Jenner, members of the Tax Commission of the state of Washington:

You will please take notice that the above named plaintiffs have filed their complaint in the office of the clerk of the United State. District Court for the Eastern District of Washington, Northern Division, on the 19th day of June, 1936, a copy whereof is herewith served upon you, and that the District Court has issued an order to show

cause why the defendants above named should not be enjoined from enforcing the provisions of Title IV, Chapter 180 of the Session Laws of 1935 of the state of Washington, pending the trial of this cause on the merits, a copy of such order is also served upon you herewith.

You are further notified that the plaintiffs' application for an interlocutory injunction has been set down for hearing before a statutory court of three judges in the city of Spokane, Washington, at 10 o'clock a. m., on the 19th day of June, 1936, as appears from the copy of said order to show cause, which is also served upon you herewith.

[fol. 24] Dated at Spokane, Washington, this 5th day of June, 1936.

Graves, Kizer & Graves, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 25] In United States District Court

[Title omitted]

Motion to Dismiss—Filed June 18, 1936

Come now the defendants and move the court for an order dismissing the above entitled action upon the ground that the bill of complaint fails to state a cause of action against the defendants, or any or either of them, or entitle the plaintiffs, or any or either of them, to any relief whatsoever.

G. W. Hamilton, Attorney General of the state of Washington. R. G. Sharpe, Assistant Attorney General of the State of Washington, Attorneys for Defendants.

Copy received this 18 day of June, 1936.

Graves, Kizer & Graves, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 26] In United States District Court

[Title omitted]

Minute Entry of Hearing—June 19, 1936

The above entitled matter came on for hearing before Judges Haney, Cavanah and Webster as a statutory three judge Court on Defendant's motion to dismiss the action, and also on Plaintiff's application for an interlocutory injunction, Mr. W. G. Graves appearing for the plaintiffs, and Mr. R. G. Sharpe appearing for the defendants.

After the argument of counsel the motion to dismiss and application for interlocutory injunction taken under advisement, each counsel allowed 10 days to file a brief in answer to other counsel's trial brief.

* * * * * * *

Thereupon Court adjourned until Saturday, June 20, 1936.

J. Stanley Webster, District Judge.

[fol. 27] In United States District Court for the Eastern District of Washington, Northern Division

No. E 4473.

Silas Mason Company, Inc., Walsh Construction Company, Guy F. Atkinson, George H. Atkinson, William E. Kier and Elmer L. Kier, Co-partners as Atkinson-Kier Company, and Mason-Walsh-Atkinson-Kier Company, Plaintiffs,

vs.

Harold H. Henneford, Thomas S. Hedges and T. M. Jenner, Members of the Tax Commission of the State of Washington, Defendants

July 14, 1936

Messrs. Graves, Kizer & Graves, Spokane, Washington, Attorneys for the Plaintiffs.

G. W. Hamilton, Attorney General, State of Washington; R. G. Sharpe, Assistant Attorney General, State of Wash-

ington, both of Olympia, Washington, Attorneys for the defendants.

Before Haney, Circuit Judge, Webster and Cavanah, District Judges, as a Statutory Three-Judge Court

OPINION—Filed August 3, 1936

CAVANAH, District Judge:

The United States, under an act of Congress, is engaged in the construction of the Grand Coulee Dam, on the Columbia River, for the purpose of controlling floods, improving navigation, providing for the storage and delivery of stored water for the reclamation of public land, and generation of electrical energy. After receiving bids for the construction of the dam, which is one of unusual magnitude, a contract was, on July 16, 1934, entered into by [fol. 28] the United States and the plaintiffs (other than the Mason-Walsh-Atkinson-Kier Company) whereby plaintiffs named, agreed to furnish some of the materials and to perform work required for the construction of the naked dam and power plant in accordance with specifications of the Columbia Basin Project. Consideration of the contract was that plaintiffs were to receive $29,339,301.50 for the performance of the work and such materials as were to be supplied by them, and such additional amount caused by changes to be made in the plans and specifications by the United States, which has increased the amount of the agreed contract price by over $7,000,000.00.

The plaintiffs are non-residents of the state of Washington, and have no other business and are not engaged in other operations in that state, than the construction of the dam, and are within the state solely for the purpose of discharging their contract obligations with the United States.

The defendants constitute the tax commission of the state of Washington and as such are demanding payment of and endeavoring to collect the tax which is the subject of the controversy.

The legislature of the state of Washington, at the 1935 Session of the Legislature enacted a general revenue act, Chapter 180, Session Laws of Washington, 1935. By Title 3 of that Act it provided for a tax on retail sales within

the state of Washington, and by Title 4, for what is called a compensating tax, which is, in effect, a tax upon purchases of materials made by persons within the state of Washington, and in other states of the Union.

Claiming to act under authority of the act, the Tax Commission has adopted a number of rules and regulations relating to the various taxes provided by the act, and respecting Title 4, the Tax Commission has by rule provided that the nature of the tax is a compensating tax and so enacted to supplement the retail sales tax, by imposing a like tax for the privilege of using within the state tangible personal [fol. 29] property purchased at retail, subsequent to April 30, 1935, and with respect to which property, neither the sales tax nor the use tax of 2% has been imposed by the state of Washington or any other state, and the rules further provide that "the primary purpose of the compensating tax is to protect the merchants of Washington from discrimination arising by reason of the inability of the state, because of the federal constitution, to impose a tax upon sales made to residents of this state by competitive merchants in other states", Rule 178, page 104.

Having then in mind the facts appearing in the complaint and affidavits presented and the provisions of the act, we find that prior to the enactment of the act, plaintiffs had purchased in other states than Washington, heavy equipment and machinery which were necessary for the construction of the dam under their contract. After considering the character of the work done, the frequent repairs and replacement of machinery required, which cannot be obtained within the state of Washington, but must be purchased in other states, during the months of May and June 1935, plaintiffs purchased within the United States and outside of the state of Washington, equipment and machinery and other articles used in the construction of the dam, the purchase price of which was $899,390.91 plus transportation cost $21,798.43.

In the light of the facts, the requirements of the act and the regulations of the commission, plaintiffs, by their complaint and affidavits assert that as against them, the provisions of Title 4, chapter 180 of the laws of Washington are illegal and unenforcible and that such tax be removed as a cloud upon the title of their personal property purchased by them outside of the state of Washington and that de-

fendants be enjoined and perpetually restrained from enforcing and attempting to enforce the collection of such tax from them or by the sale of their property.

The reasons urged by plaintiffs as to the illegality of the tax as against them are:

[fol. 30] First: That the construction of the dam upon which plaintiffs are engaged under their contract with the United States is a governmental work in the prosecution of which the executive department of the United States is exercising a franchise granted by Congress to construct a dam across the Columbia River, a navigable stream, to the end that navigation may be improved, and irrigation of public lands and flood control be effected and that as the United States is in the exercise of the franchise and the prosecution of the Governmental work the plaintiffs are employed as agencies and instrumentalities of the United States, and their property is exempt from the imposition of the tax.

We think that under the record before us this contention is not well founded, when we are confronted with the facts that the plaintiffs are nothing more than independent contractors performing work and furnishing materials for a definite price which the government has agreed to pay and they have agreed to accept under the contract obtained by competitive bids. Their relations to the government are contractual, they do not exercise governmental functions, as they only undertook to construct the dam according to plans and specifications, adopted by the government, for a profit to be made in so complying. In no way is the government affected by the fact that they pay or do not pay taxes or that they are a government instrumentality. The cases relied upon by plaintiffs are not applicable to the facts here for we find that most of them are based upon facts where the parties claiming exemption were either agents of the government or engaged as employees or officers of the government in the exercise of governmental functions. The authorities seem to agree that independent contractors with the government for gain cannot claim immunity from taxation by reason of furnishing material or labor to the United States. Susquehanna Power Company v. State Tax Commission of Maryland, 283 U. S. 291; Broad River Power Co., v. Query et al., 288 U. S. 178; Trinityfarm [fol. 31] Construction Co., v. Grosjean, Supervisor of Public

Accounts of Louisiana, 291 U. S. 466; Six Cos., Inc., v. DeVinney, County Assessor, 2 Fed. Supp. 693; Nevada-California Power Co., v. Ullom et al., 3 Fed. Supp. 935; Ranier National Bank v. Henneford, 182 Wash. 159-163; General Construction Co. v. Fisher, 149 Ore. 84; 39 Pac. (2d) 358-361. Citations of similar import might be multiplied many times but those cited are enough to demonstrate beyond peradventure that under the record plaintiffs are not so situated as to urge that they are an agency or instrumentality of the United States exercising governmental functions in order to bring them under the rule of exemption of taxes.

Second: We come then to the real question in the case as to the constitutionality of the tax as against the plaintiffs. It is urged that the tax is levied against articles purchased outside of the state of Washington by plaintiffs because in the light of its history and present setting it is a deliberate attempt to tax articles purchased and brought in from another state, which is discriminating in its incidence against the articles because of their origin in another state. The Commerce Clause of the federal constitution is invoked as it is asserted that the act attempts to regulate commerce between states, the power of which is in Congress. The provisions of the act in question, which are pertinent to our inquiry are section 31; "There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state any article of tangible personal property purchased subsequent to April 30, 1935. Such tax shall be levied and collected in an amount equal to the purchase price paid by the taxpayer multiplied by the rate of 2%." Section 33; "If any article of tangible personal property has already been subjected to a tax by this or any other state in respect to its sale or use in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the [fol. 32] previous tax upon the sale or use was computed." Section 35 (a); "The term 'purchase price' shall mean the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. The term shall include, in addition to the consideration paid or given

or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this state."

The terms of the act are that the tax is levied and collected on any article of tangible personal property in an amount equal to the purchase price paid by the taxpayer multiplied by the rate of 2%, whether the article is purchased within or without the state of Washington, and is termed a compensating tax. It levies an excise tax for the privilege of using within the state, any article of personal property purchased subsequent to April 30, 1935. It is obvious from the act and the provisions of the exceptions to its operations that it was intended to discriminate against articles brought in from other states in order to remove any competition with the merchants of the state of Washington. This appears by sections 32 (c); 33 and 35 (a) of the act, and in its practical operation when applied to those states other than the state of Washington who have, and those who do not have a sales tax. It is apparent that the discrimination appears, as the complaint discloses that twenty-three states of the Union have a sales tax and as an illustration of the practical operation of the Washington tax we find that Idaho has a 2% sales tax, Oregon has no sales or use tax. One purchasing property in Oregon cannot bring it into Washington unless he pays a 2% tax on the purchase price, plus transportation costs, while one who purchases property in Idaho destined to be used in Washington may bring the property into Washington and put it to use without paying the tax. A further [fol. 33] illustration is; that the state of Illinois has a tax like Washington while Indiana has a tax of 1%, therefore, articles purchased in Illinois may be brought into and used in Washington tax free, while the same articles purchased in Indiana must pay a tax of 1%, the difference between the tax of the two states, plus the cost of transportation from Indiana to Washington. The discrimination more forcibly appears where the defendants under section 35 (a) have added $21,798.43 to the purchase price of the articles as transportation costs in other states which are subject to tax under the Washington act. Under the language of the act and the interpretation given to it by the Washington Tax Commission, both the legislature and the commission had primarily in mind removing from the shoulders

of the merchants of Washington competitive disadvantage occasioned by the Washington sales tax and the absence of such a tax in other states. This thought is borne out, as far as the commission is concerned, who is intrusted with the enforcement of the law, where they have said in regulation 178: "Statement of the nature of the tax.—The Compensating tax (Title IV) was enacted to supplement the retail sales tax by imposing a like tax for privilege of using within this state tangible personal property purchased at retail subsequent to April 30, 1935 (the effective date of the retail sales tax law) and in respect to which property neither a sales tax nor a use tax equal to 2% has been imposed by this or any other state."

"The primary purpose of the compensating tax is to protect the merchants of Washington from discrimination arising by reason of the inability of the state, because of the federal constitution, to impose a tax upon sales made to residents of this state by competitive merchants in other states."

When the validity of a state statute is challenged on the ground that it is repugnant to the Commerce Clause we are not bound by the legislative declaration of purposes because if the statute in its practical operation directly [fol. 34] burdens or destroys interstate commerce, the act must fall. We must look to the practical consideration of the established course of business in determining what is interstate commerce; Shafer v. Farmers Grain Co., 268 U. S. 189; Foster Packing Company v. Hoydel 278 U. S. 1-10; Baldwin v. Seelig, Supra. The courts are only concerned "with its practical operation, not its definition or the precise form of descriptive words which may be applied to it"; Lawrence et al., v. State Tax Commission of Mississippi 286 U. S. 276. If it bears upon commerce among the states as to amount to a regulation in a relatively immediate way, it cannot be upheld by name or form.

If the nature and effect of the tax levied by the act discriminates against articles purchased and brought in from other states and because of their origin in another state it is an attempt to regulate and a burden upon interstate commerce and would be inconsistent with the freedom of trade which Congress only has the power to regulate as between the states. It would seem unnecessary to cite

authorities in support of this well known construction of the commerce clause of the constitution, but see Hart Refineries v. Harmon, 278 U. S. 499, Baldwin v. Seelig 294 U. S. 511. With these principles in mind and applying them to the record it is apparent that the tax is discriminating in its incidence against articles because of their origin in other states and that the Washington act was framed for the purpose of suppressing competition from without the state. Plaintiff had a right to go into other states without first obtaining the leave of the state of Washing for all legitimate purposes of commerce and the litigated statute which lays a burden on the exercise of that privilege is void as against the plaintiff under the commerce clause. Dahnke Walker Milling Company v. Bondurant 257 U. S. 282; Lemke, as Attorney General of the state of North Dakota et al. v. Farmers Grain Co., 258 U. S. 50; Asher et al. v. Engels 13 Fed. Supp. 655.

The argument is pressed that the state may lawfully tax the "use" of tangible personal property brought in from [fol. 35] other states without a violation of the commerce clause and the defendants rely principally upon the decision of the Supreme Court of the state of Washington where this tax was sustained by a majority opinion as against the contention that it offends the commerce clause, Vancouver Oil Co. v. Henneford, 183 Wash. 317, 49 Pac. (2d) 14. In that decision the state Supreme Court seemed to have based its decision upon the sole thought that the goods affected had come to rest within the state of Washington and not as we view it, whether the tax was discriminating in its incidence against the goods because of their origin in another state. If it is levied without regard to origin and the goods had come to rest in the state of Washington, it would be neither a regulation nor a burden of interstate commerce, but that is not the case under this act and the record before us, for as has been said, it appears clear that the act was intended to levy a tax on articles purchased outside of the state of Washington, because of their origin, and by so doing it discriminates against such articles.

Tested by these considerations we have reached the conclusions that the litigated act is violative of the commerce clause of the federal constitution as against the plaintiffs and that the motion to dismiss is overruled, and that an

interlocutory injunction issue as prayed for in the complaint.

[File endorsement omitted.]

[fol. 36] IN UNITED STATES DISTRICT COURT

No. E. 4473

SILAS MASON COMPANY, INC., et al.

v.

HENNEFORD et al.

DISSENTING OPINION—Filed August 3, 1936

HANEY, Circuit Judge, Dissenting:

The tax in question is imposed on "the privilege of using" in Washington, articles of personal property, and is a "use tax." The validity of such taxes is not questioned except insofar as it may be said to conflict with the commerce clause of the federal constitution.

I cannot agree that the tax here laid, discriminates against commodities because of their origin in another state. The statute (Ch. 180, Sec. 31, Laws of Washington, 1935), levies the tax on the use of "any article of tangible personal property," and makes no distinction between articles, either because of the place of their origin or place of purchase. It is applicable to articles originating or purchased within the state of Washington as well as to those originating or purchased elsewhere.

The following section (Sec. 32 (c)), exempts from taxation "the use of any article of tangible personal property the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this title whether under the laws of this state or of some other state of the United States." Section 33 provides:

"If any article of tangible personal property has already been subjected to a tax by this or any other state in respect to its sale or use in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at

a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed."

The effect of these two latter sections together with Sec. 31 is to tax the use of all personal property, the sale or use of which has not already been taxed by any state, including Washington, to the extent of two percent of its purchase price. I see no discrimination in such a tax. As pointed out by defendants the articles exempt under the Washington sales tax law (See Sec. 19 Ch. 180 Laws 1935), even originating in Washington are subject to the use tax, See Sec. 32, supra.

[fol. 37] As to the universal applicability of the "use" tax, we might fairly consider the result had the Governor of Washington vetoed the sales tax (Title III, Ch. 180, Laws of 1935). Under such circumstances it seems to me conclusive that the "use" tax provided for in Sec. 31, supra, would have applied to the use of all tangible personal property, irrespective of its place of origin.

Plaintiffs make no contention that the tax, as applied to them is a tax on an instrumentality of interstate commerce, but contend that the tax is imposed directly upon interstate commerce, because in effect the tax is one on the goods themselves.

I am unable to agree with that argument, because the tax is on the "use" of the articles, not on the articles themselves. If the tax was one on the "use" of the articles while in interstate commerce, it might then be invalid, but there is no pleading nor proof in this case which authorizes such a conclusion. In fact, under the pleadings, it is shown that the articles were in interstate commerce until they reached their destination, at which point, the articles were intended to be used in constructing the dam. When that destination was reached, the character of the goods as "interstate commerce" ended. Bacon v. Illinois, 227 U. S. 504. By reason of the presumption that a statute is valid, we must presume that the tax attached to the use of the goods after their movement in interstate commerce had ended.

I therefore believe the bill should be dismissed.

[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION AS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW—
Filed August 7, 1936

Plaintiffs state that the opinion of the court fully complies with Equity Rule No. 70½, save and except that it fails and omits to include a significant paragraph from the demand served upon these plaintiffs by defendants set forth in paragraph eight of the complaint.

Therefore plaintiffs request an order be made making the opinion a part of the record in this case, and that it be adopted as the findings of fact and conclusions of law required by said rule when supplemented by the following further findings of fact and conclusions of law:

* * * * * * *

Clerk's Note

Herein are set forth supplemental findings numbers I to IV inclusive and supplemental conclusions of law numbers I and II in the same words and figures set forth in the findings of fact and conclusions of law.

Filed herein on September 16, 1936.

A. A. LaFramboise, Clerk.

* * * * * * *

[fol. 39] Dated this 7th day of August, 1936.

Graves, Kizer — Graves, Attorneys for Plaintiffs.

Copy received this 7th day of August, 1936.

G. W. Hamilton & R. G. Sharpe, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed September 16, 1936

Upon considering the motion of plaintiffs with respect to the making and drawing of findings of fact and conclusions of law, and being sufficiently advised,

It is Ordered that the opinion of this court filed in this cause be and the same hereby is made a part of the record and is hereby adopted as findings of fact and conclusions of law under Equity Rule No. 70½ supplemented by the following further findings of fact and conclusions of law:

Supplemental Finding No. I

"Prior to the commencement of this complaint the defendants as the Tax Commission of the state of Washington have made the following written demand upon plaintiffs:

'Mason-Walsh-Atkinson-Kier Company, Mason City, Washington.

GENTLEMEN:

We have been advised that during the months of May and June, 1935, the Mason-Walsh-Atkinson-Kier Company purchased at retail and used within the state of Washington various and sundry articles of tangible personal property, the sale or use of which had not theretofore be- subjected to the payment of any tax by the state of Washington or by any other state, the total purchase price of which [fol. 41] amounted to $899,390.91, exclusive of transportation costs. We have also been advised that transportation costs in connection with said purchases for said two months period amounted to $21,798.43.

We hereby make formal demand that you pay to the tax commission of the state of Washington on or before May 1, 1936, the sum of $18,423.78, the same being compensating tax at the rate of 2% due and payable to the state upon the amounts above set forth under the provisions of Title IV, Chapter 180, Laws of 1935.

Demand is also hereby made upon you for payment on or before May 1, 1936, of a like tax upon all articles or tangible personal property purchased at retail between the dates July 1, 1935, and February 29, 1936, inclusive, and used by you in the state of Washington, the sale or use of which had not, prior to your purchase thereof, been subjected to a tax by this or any other state equal to 2% of the purchase price thereof.

You are advised that tax liability under Title IV, chapter 180, Laws of 1935, arises at the time tangible personal property is put to use within the state of Washington. Such property is put to use by the first act after delivery is completed within the state by which the article purchased is actually used or is made available for use with intent actually to use the same within the state. The term 'made available for use' means and includes the exercise of any right or power over tangible personal property preparatory to actual use within the state, such as keeping, storing, withdrawing from storage, moving, installing or performing any act by which dominion or control over the property is assumed by the purchaser.

In the event that the foregoing demand is not compiled with on or before the date specified, we shall be compelled to take the proper steps for the recovery of the full amount of taxes due.

Very truly yours, Tax Commission of the State of Washington, By T. M. Jenner, Commissioner."

EWA:K.

Supplemental Finding No. II

Under the authority of Section 208 of Chapter 180, Session Laws of Washington 1935, the defendants, acting as the Tax Commission of the state of Washington, have on October 16, 1935, issued sundry rules and regulations relating to the various taxes provided by the act and their collection. Respecting Title IV such rules and regulations [fol. 42] provide among other things as follows:

"Statement of the Nature of the Tax.—The Compensating Tax (Title IV) was enacted to supplement the Retail Sales Tax by imposing a like tax for privilege of using within this state tangible personal property purchased at retail subsequent to April 30, 1935 (the effective date of the Retail Sales Tax law) and in respect to which property

neither a sales tax nor a use tax equal to 2% has been imposed by this or any other state.

"The primary purpose of the Compensating Tax is to protect the merchants of Washington from discrimination arising by reason of the inability of the state, because of the Federal Constitution, to impose a tax upon sales made to residents of this state by competitive merchants in other states.

"In general, the Compensating Tax applies upon the use of any property, the sale of which would have been subject to the Washington sales tax had it been purchased within the state. Conversely, it does not apply upon the use of any property, the sale of which has been subjected to the Washington sales tax. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, provide a uniform tax upon either the sale or use of all tangible personal property, irrespective of where it may have been purchased."

Supplemental Finding No. III.

At the hearing on plaintiffs' application for an interlocutory injunction, plaintiffs introduced no evidence in support of the contention made by them in paragraph nine, subdivision "h" of the complaint, wherein it is alleged that the said compensating tax provided for in Title IV of the said 1935 act is not collectible from plaintiffs by reason of the alleged ownership by the United States of the land whereon said dam is being constructed, and at said hearing the attorney for plaintiffs stated in open court that plaintiffs made no claim that said plaintiffs were entitled to an interlocutory injunction in the above cause by reason of the alleged facts set forth in said paragraph nine, subdivision "h", but that plaintiffs would submit evidence in support of such contention at the final hearing of said cause in support of their prayer for a permanent injunction, but not otherwise.

Supplemental Finding No. IV.

Plaintiffs have not paid any part of said purported tax and deny liability therefor. The seizure and sale of the [fol. 43] property for the use of which defendants threaten to collect said tax would disrupt the complicated structure and plans under which the construction of said dam is

progressing and would render it impossible for plaintiffs to proceed with the execution of said contract, would do plaintiffs irreparable injury and would embarrass and greatly delay the prosecution and completion of said contract. Unless the collection of said tax is enjoined, plaintiffs' only recourse is to pay said tax as demanded. In that event plaintiffs' only recourse under the laws of the state of Washington will be to bring suit in the superior court of the state of Washington for Thurston county for the recovery thereof. Plaintiffs will be engaged in the progress of said work for upwards of two years, and from time to time in its progress will be required to purchase machinery and materials necessary in the construction of said dam, outside Washington.

Supplemental Conclusion No. I

This court has jurisdiction of this cause by reason of diversity of citizenship, and because of the denial of the rights secured to plaintiffs by the Constitution of the United States.

Supplemental Conclusion No. II

The equity jurisdiction of this court in said cause is necessary because plaintiffs have no plain, speedy or adequate remedy at law.

Let decree enter in accordance with the foregoing.

Dated this 16th day of Sept., 1936.

——— ———, Circuit Judge. Charles C. Cavanah, District Judge. J. Stanley Webster, District Judge.

Copy received this 7th day of August, 1936.

G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 44] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed September 21, 1936

Come now the defendants and except to the Findings of Fact and Conclusions of Law made and entered on Plaintiffs' application for an interlocutory injunction, as follows:

(1) Defendants except to that portion of said findings and conclusions wherein the court finds and concludes that Title IV, Chapter 180, Laws of Washington of 1935, and the tax imposed thereby, as measured by the purchase price and transportation costs of tangible personal property purchased by plaintiffs outside of Washington and transported into and used by plaintiff in Washington, constitutes an unlawful burden on interstate commerce and is therefore violative of the commerce clause of the federal constitution, for the reason that the same is contrary to the law.

(2) Defendants except to that portion of said findings and conclusions wherein the court finds and concludes that the tax imposed by Title IV, Chapter 180, Laws of Washington of 1935, is, in effect, a tax upon purchases of materials made by persons within the state of Washington, and in other states of the Union, for the reason that the same is supported neither by law nor by the facts revealed by the evidence herein.

[fol. 45] Defendants except to that portion of said findings and conclusions wherein the court finds and concludes that the tax imposed by Title IV, Chapter 180, Laws of Washington of 1935, was intended to and does discriminate against articles brought into the State of Washington from other states in order to remove any competition with the merchants of the state of Washington, for the reason that the same is supported neither by law nor by the facts revealed by the evidence herein.

(4) Defendants except to that portion of said findings and conclusions wherein the court finds and concludes that

the tax imposed by Title IV, Chapter 180, Laws of Washington of 1935, is violative of the commerce clause of the federal constitution in that such tax is discriminating in its incidence against articles because of their origin in states other than Washington, and that said statute was framed for the purpose of suppressing competition from without the state of Washington, for the reason that the same is supported neither by law nor by the facts revealed by the evidence herein.

Dated this 21st day of September, 1936.

G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants.

Order Allowing Exceptions

The findings of fact, conclusions of law, and order granting interlocutory injunction having been made and filed herein in the absence of counsel for defendants and without prior notice to counsel for either party of the date of such filing, and the foregoing exceptions to the findings and conclusions of the court having been submitted to the court, said exceptions and each of them are hereby allowed.

Done in open court this 21st day of September, 1936.

J. Stanley Webster, Judge.

Copy received this 21st day of September, 1936.

Graves, Kizer & Graves, Attys. for Plffs. W. G. Graves, Solicitor for Plffs.

[fol. 46] In United States District Court

[Title omitted]

Order for Interlocutory Injunction—Filed September 16, 1936

This cause has come on regularly to be heard upon the motion of plaintiffs for an interlocutory injunction, and the court having duly considered the pleadings, affidavits and stipulations of the respective parties and arguments of counsel, and having made and drawn findings of fact and conclusions of law

It is Ordered that as against the plaintiffs, the provisions of Title IV, chapter 180, Section Laws of 1935, are

null and void; that the tax under the authority of Title IV of which the defendants are claiming payment is illegal and unenforceable as against plaintiffs; and that defendants, Harold H. Henneford, Thomas S. Hedges and T. M. Jenner, and each of them, both individually and as the Tax Commission of the state of Washington be enjoined and restrained, during the pendency of this action and until further order of this court, from enforcing or attempting to enforce the collection of such tax from the plaintiffs or by the sale of their property.

It is Further Ordered that plaintiffs file a bond in the sum of Twenty-five Thousand Dollars ($25,000) duly con-
[fol. 47] ditioned as required by law.

Dated this 16th day of September, 1936.

——— ———, Circuit Judge. Charles C. Cavanah, District Judge. J. Stanley Webster, District Judge.

Copy received this 7th day of August, 1936.

G. W. Hamilton & R. G. Sharpe, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 48] [File endorsement omitted]

In United States District Court

[Title omitted]

PETITION FOR APPEAL—Filed September 21, 1936

To the Honorable, J. Stanley Webster, Judge of the United States District Court for the Eastern District of Washington, Northern Division:

Your petitioners, Harold H. Henneford, Thomas S. Hedges and T. M. Jenner, members of the Tax Commission of the State of Washington, defendants in the above-entitled cause, respectfully represent and show that in said cause pending in the United States District Court in and for the Eastern District of Washington, Northern Division, there was entered on the 16th day of September, 1936, an order granting plaintiffs' application for an interlocu-

tory injunction, as prayed for in its complaint in said suit, which application was heard by three judges, in accordance with the provisions of section 266 of the Judicial Code, and which order is greatly to the prejudice and injury of your petitioners, and is erroneous and inequitable:

Wherefore, in order that your petitioners may obtain relief in the premises and for opportunity to show the [fol. 49] errors complained of, your petitioners pray that they may be allowed an appeal in said cause to the Supreme Court of the United States, agreeably to the statutes and rules of the court in such case made and provided, and that proper orders touching the security required of them be made.

Dated September 21st, 1936.

G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants.

Order Allowing Appeal.

Appeal allowed upon giving bond as required by law for the sum of five hundred ($500.00) dollars.

J. Stanley Webster, District Judge.

Due and timely service of the foregoing Petition and Order by receipt of a true copy thereof acknowledged this 21st day of September, 1936.

Graves, Kizer & Graves, Attorneys for Plaintiffs.
W. G. Graves, Solicitor for Plaintiffs.

[fol. 50] [File endorsement omitted]

In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed September 21, 1936

Statement

Title IV, Chapter 180, Laws of Washington of 1935, imposed upon every person in the state of Washington a tax or excise for the privilege of using within said state any article of tangible personal property purchased subse-

quent to April 30, 1935, equal to 2% of the purchase price thereof plus costs of transportation to place of use, with an off-set of any use or sales tax paid thereon either in the state of Washington or any other state. On September 16th, 1936, an order was entered in the above cause adjudging that the provisions of said state are null and void and the tax imposed thereby is illegal and unenforceable as against plaintiffs, and granting an interlocutory injunction restraining the defendants, both individually and as the Tax Commission of the state of Washington, during the pendency of said suit from enforcing or attempting to enforce the collection of said tax from the plaintiffs or by the sale of their property.

[fol. 51] Assignments of Errors.

I

The court erred in granting said order for an interlocutory injunction herein for the following reasons:

The court granted said order upon the sole but erroneous ground that Title IV, Chapter 180, Laws of Washington of 1935, and the tax thereby imposed, as measured by the purchase price and transportation costs of tangible personal property purchased by plaintiffs outside of Washington and transported into and used by plaintiffs in Washington, constitutes an unlawful burden on interstate commerce and is therefore violative of the commerce clause of the federal constitution.

II

The court erred in finding and concluding that the tax imposed by Title IV, Chapter 180, Laws of Washington of 1935, is, in effect, a tax upon purchases of materials made by persons within the state of Washington, and in other states of the Union.

III

The court erred in finding and concluding that the tax imposed by Title IV, Chapter 180, Laws of Washington of 1935, was intended to and does discriminate against articles brought into the state of Washington from other states in order to remove any competition with the merchants of the state of Washington.

IV

The court erred in finding and concluding that the tax imposed by Title Iv, Chapter 180, Laws of Washington of 1935, is violative of the commerce clause of the federal constitution in that the tax is discriminating in its incidence against articles because of their origin in other states than Washington and that said statute was framed for the purpose of suppressing competition from without the state of Washington.

[fol. 52] Prayer for Reversal

Wherefore defendants pray that the said order for an interlocutory injunction may be reversed, and for such other and further relief as to the court may seem just and proper.

Dated this 21st day of September, 1936.

G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants.

Due and timely service of the foregoing Assignment of Errors and Prayer for Reversal by receipt of a true copy thereof acknowledged this 21st day of September, 1936.

Graves, Kizer and Graves, Attorneys for Plaintiffs.
W. G. Graves and B. K. Kizer, Solicitor for Plaintiffs.

[fols. 53 & 54] Bond on Appeal for $500.00, approved and filed September 21, 1936, omitted in printing.

[fols. 55-63] Citation, in usual form, showing service on Graves & Kizer, filed September 21, 1936, omitted in printing.

[fol. 64] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence under Equity Rule 75—Filed September 21, 1936

Be It Remembered: That the application of the plaintiffs for an interlocutory injunction restraining defendants from levying upon the personal property described in the complaint or otherwise enforcing the provisions of Title IV, Chapter 180, Session Laws of Washington of 1935, pending the trial of the above cause, and the order to show cause entered June 5th, 1936, pursuant to said application, came on regularly for hearing on the 19th day of June, 1936, at the hour of 10:00 a. m. before the Honorable Bert Emory Haney, Circuit Judge, the Honorable Stanley J. Webster, District Judge, and the Honorable Charles Cavanah, District Judge, theretofore duly and regularly assembled by the above entitled court, sitting in equity, for the purpose of hearing said application as provided by Section 266 of the Judicial Code as amended, W. G. Graves, Esquire, appearing as counsel for plaintiffs, and R. G. Sharpe, Esquire, appearing as counsel for defendants.

[fol. 65] PLAINTIFFS' EVIDENCE

Upon said application and order to show cause being called for hearing, plaintiffs introduced in evidence the affidavits of J. B. Canning, Arnold Hanger, Thomas J. Walsh, Jr., George H. Atkinson, and William E. Kier, which was the only evidence introduced by plaintiffs in support of such application for interlocutory injunction. The said affidavits so introduced by plaintiffs were in the following words and figures, to-wit:

[fol. 66] AFFIDAVIT OF J. B. CANNING

STATE OF WASHINGTON,
County of Okanogan, ss:

J. B. Canning, being first duly sworn, on his oath says: My domicile is, and for some years has been, at Fairmount,

West Virginia, which I expect to continue to make my permanent home. Ever since the commencement of the construction of the Grand Coulee Dam, in November, 1934, I have been temporarily residing at Mason City, Washington, and during that period have been employed by the Mason-Walsh-Atkinson-Kier Company, one of the plaintiffs above named, as its purchasing agent in charge of the purchase of equipment and supplies to be used in the performance of that certain contract entered into on the 16th day of July, 1934, between the United States of America, of the one part, and Silas Mason Company, Inc., a corporation, Walsh Construction Company, a corporation, and Atkinson-Kier Company, a co-partnership, parties of the other part. As such purchasing agent I supervised the making of purchases by Mason-Walsh-Atkinson-Kier Company during the months of May and June 1935 and am therefore advised concerning the nature and character of the purchases scheduled on the list of such purchases hereto annexed and hereby by me made a part of this affidavit.

This list so annexed lists only a part of the equipment and supplies purchased by Mason-Walsh-Atkinson-Kier Company during such period, it being restricted to the purchases made by Mason-Walsh-Atkinson-Kier Company of vendors at points located outside the state of Washington. As to such interstate shipments, it is to the best of my knowledge and belief complete.

The contract above described covers the construction of a large part of what is known as the "High Dam" across the Columbia River at Grand Coulee, Washington, which it is said will be the largest structure, when completed, ever erected by man. Accordingly, it uses machinery and equipment for the performance of this contract on an unprecedented scale. Much of the principal equipment used in the [fol. 67] performance of the contract, including the larger and more expensive equipment, has had to be constructed by manufacturers pursuant to special specifications prepared at the instance of Mason-Walsh-Atkinson-Kier Company in order to be large enough for the magnitude of the work, and such equipment could only be obtained of manufacturers located in the industrial region of the United States east of the Mississippi River.

My instructions from my employer were, from the first, to purchase all of the equipment and supplies that it was

reasonably feasible to purchase within the state of Washington and I sought wherever I could to follow out those instructions. Much the major portion of the equipment and supplies required by Mason-Walsh-Atkinson-Kier Company are not even carried in stock by any business concern within the state of Washington. After a careful scrutiny of the exhibit attached to this, my affidavit, I am able to say that, to the best of my knowledge and belief, none of the purchases listed on the annexed exhibit were carried in stock and available for purchase by us within the state of Washington except only in the instances in this affidavit hereinafter set forth, and that none of the items, so far as I am advised or able to learn, so purchased by us were manufactured in the state of Washington.

Furthermore, a contracting firm such as Mason-Walsh-Atkinson-Kier Company, on a contract of this magnitude, must purchase its supplies in such large quantities and of such unusual sizes that it is obliged to buy practically all of its supplies listed on the annexed exhibit, apart from the equipment hereinabove described, of the manufacturer or of the manufacturer's larger selling agencies located in great centers of use where such goods are most marketed. Generally speaking, retailers and wholesalers in the state of Washington make no attempt to carry any stock or sell supplies of the character such as are listed on the annexed exhibit. Thus, the Mason-Walsh-Atkinson-Kier Company has been obliged to purchase these supplies either of the [fol. 68] manufacturer or of their agencies located in regions outside the state of Washington where such supplies are carried in such quantity and with such completeness as are available to supply the immediate needs of Mason-Walsh-Atkinson-Kier Company.

Such a contract as the one here in question carries an enormous overhead of expense. Its performance must proceed with the utmost expedition and without any delay for the arrival of supplies, in order that the contract may be performed without excessive losses. In every case the element of time is controlling and compels the making of purchases in centers where they can be placed with assurance that the materials and supplies can be immediately furnished and shipped.

The remainder of this affidavit will concern itself with the few exceptions to the general rule above stated that it

was impossible to buy these supplies so listed within the state of Washington, or with purchases used to illustrate our difficulties in seeking to purchase supplies of this character within this state.

With respect to voucher No. 3091G, "Rectox," referred to, purchased of the Westinghouse Electric and Manufacturing Company, it could have been purchased through a local agency in Seattle which in turn, however, did not carry it in stock and would have had to order it of the Westinghouse Electric and Manufacturing Company in East Pittsburg for it. Because of our very large purchases, we could be assured of quicker attention to our order if we wired direct, than if we allowed it to pass through a local dealer's hands. We were in a great hurry for it and accordingly wired direct to the manufacturer for it and thus made a substantial saving of time in so doing.

With respect to voucher No. 3101, covering steel purchased of the Columbia Steel Company at San Francisco, the Columbia Steel Company is a subsidiary of the United States Steel Corporation and carries a stock sufficiently complete for our purposes only in San Francisco. A little of the steel might perhaps have been purchased at Seattle or [fol. 69] at Portland. Here again haste was needed and we saved considerable time by buying it in the one place where a complete stock was carried rather than seek to find how much we could buy of it in Portland and Seattle and then buying the rest in San Francisco.

A typical order that reveals our difficulties in getting supplies which we used in enormous quantities is illustrated by vouchers 3119 and 3381. The Ingersoll-Rand Company, who must furnish these supplies, have headquarters at Butte, Montana, and their salesman at Butte covers this state. We purchased a miscellaneous assortment of supplies of Ingersoll-Rand Company at that time and the order was filled by them from the several different agencies that they have, indicated in the enclosed list, because no one of them had all that we required.

A like illustration is furnished by vouchers Nos. 3215 and 3388 to the Marshall-Wells Company. It has stores and headquarters at various places; some of the orders not shown in this list were filled in Spokane out of its stock there but the rest of the orders had to be filled and were billed to us from Portland, Oregon, from Chicago, from

Pittsburg, from Greensburg, Pennsylvania, and from St. Louis, Missouri, in order to fill the order completely. Although one voucher number was issued in each case, the orders were independently filled by various agencies and were independently billed to us.

In a number of cases the orders were placed with Washington concerns who advised that they did not have the supplies and therefore turned the orders over to concerns outside the state in order to have them filled. A typical case of this character is voucher 3394, supplies ordered of the Seattle Hardware Company at Seattle but the order turned over to a Portland house and shipped and billed to us.

Similarly voucher No. 3495 issued to Hughes & Company at Spokane, Washington, for plumbing and heating supplies. They shipped us such as they could and then turned the rest of the order over to concerns at Kewanee, Illinois, [fol. 70] New York City, Oakland, California and Pennsylvania in order to fill completely and these goods were sent to us and billed to us from these locations.

With respect to voucher No. 3,000 on the first page of the exhibit, the ton of steel listed as the last item, could probably have been bought in this state but only at a premium price, due to the small quantity handled here, and steel ordered was therefore placed with the other forms of steel not so carried in order to have the order come complete and save the difference between the premium price and the normal market price for it when purchased in such quantities as we used.

Similarly, in voucher No. 3163, on page 3 of the exhibit, we could probably have purchased the tubes, or at least a part of them, in the state of Washington but only at a premium price. Consequently, we placed the order with the other supplies which could not be purchased in the state from the Woodbury Company at Portland, who represent the northwest distributors for this material and could furnish it at a price appropriate to a business purchasing such very large quantities as we used and who could also furnish the other materials that we ordered with the tubes.

(Subscribed and sworn to.)

[fol. 71]

EXHIBIT TO AFFIDAVIT

Purchases Made by Mason-Walsh-Atkinson-Kier Company Outside the State of Washington During the Months of May & June, 1935

Voucher No.	Vendor's Name	Quantity	Description	Cost	Origin of Shipment
2936	Howard-Cooper Corporation		Hammer Parts	458.00	Portland, Ore.
2938	Ingersoll-Rand Co.		Pump Parts	478.90	Phillipsburg, N. J.
2938	Ingersoll-Rand Co.		Drill Parts	341.00	Butte, Mont.
2945	Line Material Co.	400	Bolts & Braces	43.30	Milwaukee, Wis.
2948	Marion Steam Shovel Co.		Shovel Parts	82.70	Marion, O.
2950	Photostat Corporation		Paper & Developer	109.80	Rochester, N. Y.
2971	Bucyrus-Erie Co.		Shovel Pts.	43.90	Portland, Ore.
2971	Bucyrus-Erie Co.		Shovel Parts	2.05	Milwaukee, Wis.
2971	Bucyrus-Erie Co.		Shovel Parts	362.05	Milwaukee, Wis.
2971	Bucyrus-Erie Co.		Shovel Parts	223.60	Milwaukee, Wis.
2975	Columbia Steel Co.	4,320#	Steel	122.90	Portland, Ore.
2975	Columbia Steel Co.	23,950#	Steel	683.45	Portland, Ore.
2876	Coeur d'Alene Hwe & Fdry Co.	50'	Ven tube	29.00	Wallace, Idaho
2880	Fowler Mfg. Co.	1	Water Heater Assembly	24.00	Portland, Ore.
2887	J. A. Roebling's Sons Co.	5,000'	Steel Rope	403.41	San Francisco, Cal.
2887	J. A. Roebling's Sons Co.	50¼#	Wire	15.74	San Francisco, Cal.
2903	Bright Star Battery Co.	960	Fl. Cells	43.20	Clifton, N. J.
2920	Woodbury Co.		Drill Parts	35.43	Portland, Ore.
2978	Electric Steel Fdry Co.		Repair Parts—		Portland, Ore.
			Shovels	101.00	Portland, Ore.
2978	Electric Steel Fdry Co.		"	252.50	Portland, Ore.
2978	Electric Steel Fdry Co.		"	127.50	Portland, Ore.
2978	Electric Steel Fdry Co.		"	127.80	Portland, Ore.
2978	Electric Steel Fdry Co.		"	106.00	Portland, Ore.

2978	Electric Steel Fdry Co.		"	318.40	Portland, Ore.
2978	Electric Steel Fdry Co.		"	12.00	Portland, Ore.
2980	Garlock Packing Co.		Packing	22.65	Palmyra, N. Y.

[fol. 72]

2986	Graybar Elec. Company	16	Heaters	8.64	Portland, Ore.
3000	Pac. Mach. & Tool Steel Co.	716#	Rd. Cold Fin. Steel	47.26	Portland, Ore.
3000	Pac. Mach. & Tool Steel Co.	1,565#	Chrome Vanadium	170.59	Portland, Ore.
3000	Pac. Mach. & Tool Steel Co.	1,302#	Rd. Cold Fin. Steel	85.93	Portland, Ore.
3000	Pac. Mach. & Tool Steel Co.	654#	Chrome Nickel Steel	48.72	Portland, Ore.
3000	Pac. Mach. & Tool Steel Co.	2,006#	Steel	163.17	Portland, Ore.
3025	E. D. Bullard Company	24	Safety Belts	84.00	San Fran., Cal.
3030	Ingersoll-Rand Co.		Drill Parts	492.66	Butte, Mont.
3030	Ingersoll-Rand Co.		Drill Parts	11.00	Athens, Pa.
3035	Line Material Company		Hardware	33.99	Portland, Ore.
3052	Truscon Steel Company	18,841#	Steel	618.77	Portland, Ore.
3052	Truscon Steel Company	6,061#	Steel	199.71	Portland, Ore.
3052	Truscon Steel Company	17,862#	Steel	577.99	Portland, Ore.
3054	Wash. Cor. Culvert Co.		Pipe	1,565.87	Berkeley, Cal.
3087	Bucyrus-Erie Co.		Shovel Parts	206.00	Evansville, Ind.
3087	Bucyrus-Erie Co.		Shovel Parts	90.05	So. Milwaukee, Wis.
3091	Westinghouse Elec. & M. Co.	20	Rectox	120.00	E. Pittsburgh, Pa.
3095	Austin-Western Road M. Co.		Grader Parts	51.30	Portland, Ore.
3101	Col. Steel Co.	7,328#	Steel	218.85	San Fran., Cal.
3101	Col. Steel Co.	8,970#	Steel	255.20	San Fran., Cal.
3101	Col. Steel Co.	87,873#	Steel	2,560.03	San Fran., Cal.
3102	Colyear Motor Sales		Truck Parts	10.07	Factory
3102	Colyear Motor Sales		Truck Parts	7.05	Factory
3105	Elec. Steel Fdry Co.		Shovel Bucket	1,246.50	Portland, Ore.
3105	Elec. Steel Fdry Co.		Repair Parts—		

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EXHIBIT TO AFFIDAVIT—Continued

Voucher No.	Vendor's Name	Quantity	Description	Cost	Origin of Shipment
			Shovels	82.50	Portland, Ore.
3105	Elec. Steel Fdry Co.		"	87.50	Portland, Ore.
3105	Elec. Steel Fdry Co.		"	169.35	Portland, Ore.
3105	Elec. Steel Fdry Co.		"	84.00	Portland, Ore.
3105	Elec. Steel Fdry Co.		"	137.15	Portland, Ore.
3105	Elec. Steel Fdry Co.		"	55.20	Portland, Ore.
3105	Elec. Steel Fdry Co.		"	83.70	Portland, Ore.
[fol. 73]					
3108	General Electric Co.	106-gal.	Oil.	33.92	Portland, Ore.
3115	Harnischfeger Sales Corp.		Welder Parts	2.75	Milwaukee, Wis.
3116	J. E. Haseltine Co.		Hardware	247.50	Portland, Ore.
3116	J. E. Haseltine Co.		Arc Welder	645.00	Portland, Ore.
3116	J. E. Haseltine Co.		Arc Welder	645.00	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	180.00	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	132.00	Portland, Ore.
3116	J. E. Haseltine Co.		Welding Rods	230.00	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	127.00	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	(red) 15.90	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	(red) 27.36	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	6.00	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	20.25	Portland, Ore.
3116	J. E. Haseltine Co.		Hardware	12.00	Portland, Ore.
3118	Howard-Cooper Corporation		Truck Parts	367.90	Dover, N. J.
3119	Ingersoll-Rand Company		Drill Parts	145.50	Butte, Mont.
3119	Ingersoll-Rand Company		Wrench Parts	330.95	Athena, Pa.

3119	Ingersoll-Rand Company		Oil Burner Assembly	25.45	Butte, Mont.
3119	Ingersoll-Rand Company		Hose	129.08	Butte, Mont.
3119	Ingersoll-Rand Company	15 doz.	Jackbits	43.20	Butte, Mont.
3119	Ingersoll-Rand Company	3	Chippers	165.00	San Fran., Cal.
3119	Ingersoll-Rand Company		Wrench Parts	8.90	Athens, Pa.
3119	Ingersoll-Rand Company	1	Chipper	55.00	Los Ang., Cal.
3119	Ingersoll-Rand Company		Drill Parts	2,602.00	Los Ang., Cal.
3119	Ingersoll-Rand Company	1	Chipper	55.00	San Fran., Cal.
3122	Jeffrey Man. Co.		Conveyor Parts	87.00	Columbus, O.
3122	Jeffrey Man. Co.		Conveyor Parts	3,160.50	Columbus, O.
3131	Marshall-Wells Co.	4 kgs.	Track Spikes	40.80	Portland, Ore.
3131	Marshall-Wells Co.	169' 9"	Black Pipe	254.40	Portland, Ore.
3132	Jas. H. Matthews & Co.	2sts.	Figures	28.68	Pittsburgh, Pa.

[fol. 74]

3135	Pac. Coast Steel Corp.	20#	Steel	53.28	San Fran., Cal.
3135	Pac. Coast Steel Corp.	105,590#	Steel	2,123.18	Lackawanna, Pa.
3135	Pac. Coast Steel Corp.	117,820#	Steel	2,353.27	Lackawanna, Pa.
3135	Pac. Coast Steel Corp.	112,000#	Steel	2,234.77	Lackawanna, Pa.
3135	Pac. Coast Steel Corp.	112,190#	Steel	2,232.55	Lackawanna, Pa.
3135	Pac. Coast Steel Corp.	8,650#	Steel	375.84	Los Ang., Cal.
3135	Pac. Coast Steel Corp.	138,030#	Steel	2,308.15	Johnstown, Pa.
3135	Pac. Coast Steel Corp.	82,936#	Steel	1,565.49	Johnstown, Pa.
3135	Pac. Coast Steel Corp.	2,616#	Steel	45.91	Johnstown, Pa.
3155	Wallace & Tiernan Sales Cor.	1	500-CC. Solution	2.75	Newark, N. J.
3155	Wallace & Tiernan Sales Cor.	2sts.	Gaskets, etc.	6.05	Newark, N. J.
3155	Wallace & Tiernan Sales Cor.	12	Screens	5.28	Newark, N. J.
3155	Wallace & Tiernan Sales Cor.	12	Tubes	16.56	Newark, N. J.
3133	Nine Safety Appliances Co.	24	Skullguards	66.00	Pittsburgh, Pa.
3163	Woodbury Co.	2,362 ft.	Tubes	1,208.67	Portland, Ore.

EXHIBIT TO AFFIDAVIT—Continued

Voucher No.	Vendor's Name	Quantity	Description	Cost	Origin of Shipment
3163	Woodbury Co.	2	Valves	23.80	Portland, Ore.
3163	Woodbury Co.	4	Hoists	192.60	Portland, Ore.
3163	Woodbury Co.	3	Hoists	165.24	Portland, Ore.
3164	Bucyrus-Erie Co.		Shovel Parts	142.60	Portland, Ore.
3164	Bucyrus-Erie Company		Shovel Parts	15.40	San Fran., Cal.
3164	Bucyrus-Erie Company		Price Cor.	(red) 50.00	Portland, Ore.
3177	Bucyrus-Erie Company		Shovel Parts	1,048.86	Harvey, Ill.
3181	Beall Pipe & Tank Co.	1,000′	Pipe	532.50	Portland, Ore.
3181	Beall Pipe & Tank Co.	260′	Culvert	1,777.75	Portland, Ore.
3183	Bucyrus-Erie Company	1	Fan & Drive	125.00	Evansville, Ind.
3206	Cdine Hdwe & Fdry Co.	60′	Pipe	25.00	Wallace, Idaho
3206	Cdine Hdwe & Fdry Co.	300′	Pipe	94.00	Wallace, Idaho
3209	Feenaughty Mach. Co.	1	Motor	1,120.00	Lorain, Ohio
3209	Feenaughty Mach. Co.	1	Bill Crank	9.06	Portland, Ore.
3210	Fyr-Fyter Co.		Fyr-Fyter Fluid	116.10	Dayton, Ohio

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3210	Fyr-Fyter Co.		Fyr-Fyter refills	101.25	Dayton, Ohio
3210	Fyr-Fyter Co.	30-gal.	Foamite	108.00	Dayton, Ohio
3211	Garlock Packing Co.		Packing	10.01	San Fran., Cal.
3211	Garlock Packing Co.		Sheet Packing	27.30	San Fran., Cal.
3211	Garlock Packing Co.	600	Clutch Links	90.00	Palmyra, N. Y.
3215	Marshall-Wells Co.	900′	Galv. Cloth	72.00	Portland, Ore.
3215	Marshall-Wells Company		Additional Chge	132.15	Portland, Ore.
3215	Marshall-Wells Company	500 Bx	Belt fastners	920.00	Chicago, Ill.
3215	Marshall-Wells Company		Belt tools	172.27	Chicago, Ill.

3215	Marshall-Wells Company	2	Vises	52.35	Portland, Ore.
3215	Marshall-Wells Company		Belt tools	352.36	Chicago, Ill.
3215	Marshall-Wells Company		Belt tools and lacing	946.22	Chicago, Ill.
3215	Marshall-Wells Company	6	Jacks	193.50	Pittsburg, Pa.
3215	Marshall-Wells Company	500 Bx	Belt lacing	920.00	Chicago, Ill.
3215	Marshall-Wells Company		Set screws & wrenches	3.89	Chicago, Ill.
3215	Marshall-Wells Company	200	Nuts	34.83	Portland, Ore.
3215	Marshall-Wells Company	120	Valve leathers	70.02	Greensburg, Pa.
3215	Marshall-Wells Company	200	Cap screws	81.11	St. Louis, Mo.
3215	Marshall-Wells Company	43 rls.	Mesh	88.58	Portland, Ore.
3220	Koehring Co.	2	Assemblies for 301-2B	3,657.00	Milwaukee, Wis.
3229	Fowler Mfg. Co.	2	Heaters	68.91	Portland, Ore.
3238	Bolser Mach. Co.	1	Locomotive	4,500.00	Portland, Ore.
3242	Bucyrus-Erie Co.		Shovel pts.	371.00	S. Milwaukee, Wis.
3242	Bucyrus-Erie Co.	2	Dipper sticks	1,200.20	S. Milwaukee, Wis.
3242	Bucyrus-Erie Co.	1	Pump Assembly	126.30	Harvey, Ill.
3200	Silas Mason Company	2	Transformers	5,500.00	New York City
JV-704	Jeffrey Mfg. Co.	2	Aerators	1,821.00	Columbus, Ohio
4168	Blaw Knox Co.	24	Buckets	15,420.00	Blaw Knox, Pa.
JV-779	Jeffrey Mfg. Co.		Screen Conveyor	5,400.00	Columbus, Ohio
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JV-812	Jeffrey Mfg. Co.		Cement hdlg conveyor	13,150.17	Columbus, Ohio
3858	Worthington Co. Inc.	2	Compressors and Air Receivers	3,035.60	Buffalo, N. Y.
5351	Davenport-Bessler Corp.	2	Locomotives	12,356.00	Davenport, Ia.
5351	Davenport-Bessler Corp.	2	Locomotives	12,356.00	Davenport, Ia.
4174	Davenport-Bessler Corp.	6	Locomotives	37,068.00	Davenport, Ia.
6002	Davenport-Bessler Corp.	2	Locomotives	12,356.00	Davenport, Ia.
4315	J. Hendy Iron Works	1	Skip Hoist	8,070.00	Sunnyville, Cal.
4681	J. Hendy Iron Works	1	Skip Hoist	8,070.00	Sunnyville, Cal.

Voucher No.	Vendor's Name	Quantity	Description	Cost	Origin of Shipment
4268	Koppel Ind. Car & Eqpt. Co.	10	Cars	13,250.00	Koppel, Pa.
5779	Koppel Ind. Car & Eqpt. Co.	6	Cars	7,788.00	Koppel, Pa.
5955	Koppel Ind. Car & Eqpt. Co.	4	Cars	5,300.00	Koppel, Pa.
3991	Industrial Equipment Co.	1	Fluxo Pump	5,000.00	Boulder City, Nev.
3947	Pittsburgh Des Moines Steel Co.	10	Silos	29,784.46	Des Moines, Ia.
4115	Westinghouse Elec. & Mfg. Co.		Control Eq.	8,737.96	Pittsburgh, Pa.
4275	King Brothers		Steel	5,238.87	Portland, Ore.
4539	King Brothers		Steel	8,514.38	Portland, Ore.
5369	King Brothers		Steel	477.64	Portland, Ore.
3573	Columbia Steel Co.	2,600'	Pipe	2,949.41	Portland, Ore.
4056	Worthington Co.		Pump Parts	879.50	Harrison, N. J.
3892	Fuller Co.		Cement Unload Equpt.	16,725.00	Catasauqua, Pa.
JV-727	Jeffrey Mfg. Co.		Conveyor Pts.	1,295.16	Columbus, O.
JV-812	Jeffrey Mfg. Co.	1	Airplane Tripper	18,400.00	Columbus, O.
JV-704	Jeffrey Mfg. Co.		Conveyors	17,778.15	Columbus, O.
JV-758	Jeffrey Mfg. Co.		Conveyors	10,711.46	Columbus, O.
JV-704	Jeffrey Mfg. Co.		Conveyors	14,264.76	Columbus, O.
JV-758	Jeffrey Mfg. Co.		Conveyors	134.40	Columbus, O.
JV-758	Jeffrey Mfg. Co.		Belt Fedrs.	4,855.00	Columbus, O.
JF-704	Jeffrey Mfg. Co.		Conveyors	11,342.23	Columbus, O.
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JV-758	Jeffrey Mfg. Co.		Conveyors	501.50	Columbus, O.
JV-704	Jeffrey Mfg. Co.		Conveyors	15,623.20	Columbus, O.
JV-758	Jeffrey Mfg. Co.		Conveyors	12,718.88	Columbus, O.
JV-816	Columbia Steel Company		Suspension Bridge	38,334.59	Worcester, Mass.

JV-882	Columbia Steel Company			18,111.29	Worcester, Mass.
3251	Bucyrus-Erie Company		Shovel Repair Parts	119.78	Erie, Pa.
3267	W. L. Parker	3	Used compressors	13,500.00	New York City
3270	Columbia Steel Co.	77,551#	Steel	2,461.19	Portland, Ore.
3274	Brown-Bevis Co.	25 doz.	Shovels	275.00	Los Ang., Cal.
3282	Byron-Jackson Co.		Pump Repair Pts.	119.35	Berkeley, Cal.
3287	Line Materials Co.	50	Cross arms	50.00	Portland, Ore.
3287	Line Materials Co.	100	Cross arms	100.00	Portland, Ore.
3287	Line Materials Co.	50	Cross arms	43.34	Portland, Ore.
3287	Line Materials Co.	100	Braces	15.85	Portland, Ore.
3291	Pac. Mach. & Tool Steel Co.	10#	Nickel Steel	.83	Portland, Ore.
3291	Pac. Mach. & Tool Steel Co.	33#	Bits	54.24	Portland, Ore.
3299	Truscon Steel Co.	2,578#	Steel	83.08	Portland, Ore.
3299	Truscon Steel Co.	1,161#	Steel	37.09	Portland, Ore.
3299	Truscon Steel Co.	24,422#	Steel	795.12	Portland, Ore.
3299	Truscon Steel Co.	1,448#	Steel	43.07	Portland, Ore.
3299	Truscon Steel Co.	17,811#	Steel	538.02	Portland, Ore.
3299	Truscon Steel Co.	3,785#	Steel	124.72	Portland, Ore.
3299	Truscon Steel Co.	1,536#	Steel	52.15	Portland, Ore.
3299	Truscon Steel Co.	1,396#	Steel	44.60	Portland, Ore.
3299	Truscon Steel Co.	13,446#	Steel	460.06	Portland, Ore.
3299	Truscon Steel Co.	5,172#	Steel	166.59	Portland, Ore.
3299	Truscon Steel Co.	4,176	Steel	136.43	Portland, Ore.
3299	Truscon Steel Co.	19,944#	Steel	115.04	Portland, Ore.
3299	Truscon Steel Co.	3,576#	Steel	119.52	Portland, Ore.
3299	Truscon Steel Co.	1,519#	Steel	49.94	Portland, Ore.

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3300	Westinghouse E. & M. Co.		Electric Supplies	35.75	Muskegon, Mich.
3316	Westinghouse E. & M. Co.		Air Compressor Pts.	506.15	Emeryville, Cal.

Voucher No.	Vendor's Name	Quantity	Description	Cost	Origin of Shipment
3318	Worthington Co.	2	Water Coolers	23.00	Cleveland, O.
3324	Allis-Chalmers Mfg. Co.	2	Screens	8,000.00	West Allis, Wis.
3329	Ralph N. Brodie Co.		Plates & Gaskets	23.00	Oakland, Cal.
3339	Skinner Purifiers Inc.	19	Packs	62.70	Detroit, Mich.
3339	Skinner Purifiers Inc.	1	Packs	3.30	Detroit, Mich.
3343	Steel Tank & Pipe Co.	4,570'	Steel Pipe	4,840.50	Portland, Ore.
3372	E. I. DuPont deNemours Co.	5,000	Bags	11.00	Birmingham, Ala.
3373	Elec. Steel Fdry Co.		Shovel Parts	75.00	Portland, Ore.
3373	Elec. Steel Fdry Co.		Shovel Parts	126.00	Portland, Ore.
3373	Elec. Steel Fdry Co.		Shovel Parts	69.00	Portland, Ore.
3373	Elec. Steel Fdry Co.		Shovel Parts	342.00	Portland, Ore.
3379	Graybar Elec. Co.	1,003'	Cable	866.79	Bridgeport, Conn.
3379	Graybar Elec. Co.		Elec. Sup.	89.00	Portland, Ore.
3379	Graybar Elec. Co.		Elec. Sup.	188.84	Portland, Ore.
3379	Graybar Elec. Co.	2,006'	Wire	270.81	San Fran., Cal.
3379	Graybar Elec. Co.	300'	Cable	100.43	San Fran., Cal.
3379	Graybar Elec. Co.	3'	Tubing	5.40	Schenectady, N. Y.
3379	Graybar Elec. Co.	4	Switches & 8 heaters	62.92	Portland, Ore.
3379	Graybar Elec. Co.	40	P. B. Stations	72.00	San Fran., Cal.
3379	Graybar Elec. Co.	20	Sockets	12.00	Lynn, Mass.
3379	Graybar Elec. Co.	1,003'	Cable, 10 cutouts	177.53	Bridgeport, Conn.
3379	Graybar Elec. Co.	10	Covers	32.00	Pittsburg, Mass.
3379	Graybar Elec. Co.	1	Valve	38.70	Salem, Mass.
3381	Ingersoll-Rand Co.		Drill & Compressor parts	4.80	Athens, Pa.
3381	Ingersoll-Rand Co.		"	28.95	Butte, Mont.
3381	Ingersoll-Rand Co.		"	322.15	Butte, Mont.

3381	Ingersoll-Rand Co.		"	3.30	Phillipsburg, N. J.
3381	Ingersoll-Rand Co.		"	30.25	Athens, Pa.
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3381	Ingersoll-Rand Co.		Drill & Compressor parts	110.85	Butte, Mont.
3381	Ingersoll-Rand Co.		"	422.96	San Fran., Cal.
3381	Ingersoll-Rand Co.		"	24.00	Athens, Pa.
3381	Ingersoll-Rand Co.		"	2.75	Athens, Pa.
3381	Ingersoll-Rand Co.		"	151.65	Butte, Mont.
3381	Ingersoll-Rand Co.		"	44.00	Butte, Mont.
3381	Ingersoll-Rand Co.		"	141.90	Butte, Mont.
3381	Ingersoll-Rand Co.		"	162.40	Butte, Mont.
3381	Ingersoll-Rand Co.		"	309.35	Butte, Mont.
3381	Ingersoll-Rand Co.		"	120.00	Butte, Mont.
3381	Ingersoll-Rand Co.		"	359.83	Athens, Pa.
3387	Marion Steam Shovel Co.		Shovel Repair Pts.	27.30	Erie, Pa.
3388	Marshall-Wells Co.		Drill Parts	16.24	Chicago, Ill.
3388	Marshall-Wells Co.		Drill Parts	3.60	Chicago, Ill.
3388	Marshall-Wells Co.		Hardware	9.25	.....
3388	Marshall-Wells Co.		Hardware	7.20	.....
3388	Marshall-Wells Co.		Hardware	22.32	.....
3388	Marshall-Wells Co.	550	Nuts	14.12	Portland, Ore.
3388	Marshall-Wells Co.	6'	Hose	1.80	.....
3388	Marshall-Wells Co.	2	Kegs Nuts	54.94	Worcester, Mass.
3391	Photostat Corporation		Photo Sup.	107.30	Rochester, Mass.
3394	Seattle Hdwe Co.		Hardware	2.37	Portland, Ore.
3394	Seattle Hdwe Co.		Hardware	3.71	Portland, Ore.
3394	Seattle Hdwe Co.		Hardware	6.50	.....
3402	Westinghouse E. & Mfg. Co.	3	Switches	40.32	Boulder City

Exhibit to Affidavit—Continued

Voucher No.	Vendor's Name	Quantity	Description	Cost	Origin of Shipment
3402	Westinghouse E. & Mfg. Co.	2	motors	810.90	Emerville, Cal.
3412	Gen. Elec. Sup. Corp.		Elec. Supplies	14.25	Portland, Ore.
3424	Allis-Chalmers Mfg. Co.	5	Transformers	1,192.50	Milwaukee, Wis.
3429	Feenaughty Mach. Co.		Shovel Rep. Parts	18.90	Portland, Ore.
3429	Feenaughty Mach. Co.		"	18.90	Portland, Ore.

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3430	Fyr-Fyter Co.	4	Fire Extinguishers	198.00	Tonasket, Wash.
3430	Fyr-Fyter Co.		Refills	116.10	Tonasket, Wash.
3440	Worthington Co.	1	Pump	378.40	Harrison, N. J.
3440	Worthington Co.	2	Pumps	3,801.25	Harrison, N. J.
3440	Worthington Co.	2	Pumps	658.90	Harrison, N. J.
3460	Amer. Air Filter Co.	3	Filters	614.70	Louisville, Ky.
3461	Balser Mach. Co.	1,500'	Rubber Strip	450.00	Youngstown, O.
3466	Pac. Mach. & Tool Steel Co.	296#	Tubing	46.51	Portland, Ore.
3475	Bucyrus-Erie Co.		Shovel Pts.	241.05	Harvey, Ill.
3475	Bucyrus-Erie Co.		Shovel Pts.	20.50	Harvey, Ill.
3484	Balser Mach. Co.	2	Compressors	1,603.36	Portland & Quincy, Ill.
3485	Beall Pipe & Tank Corp.		Pipe & Fittings	3,250.65	Portland, Ore.
3487	Binks Mfg. Co.	160	Nozzles	475.20	Chicago, Ill.
3488	Bucyrus-Erie Co.		Shovel Parts	91.50	Harvey, Ill.
3493	Gen. Elec. Co.	2	Transformers	311.64	Portland, Ore.
3493	Gen. Elec. Co.		Electrical Supplies	9.32	Portland, Ore.
3493	Gen. Elec. Co.		"	130.50	Portland, Ore.
3493	Gen. Elec. Co.		"	1.31	Bloomfield, N. J.
3493	Gen. Elec. Co.		"	40.61	Lynn, Mass.
3495	Hughes & Co.		Plumbing & Heat. Supplies	816.64	.....
3495	Hughes & Co.		"	26.08	Kewanee, Ill.

3495	Hughes & Co.		"	887.52	Kewanee, Ill.
3495	Hughes & Co.		"	27.96	Kewanee, Ill.
3495	Hughes & Co.		"	11.70	Pa.
3495	Hughes & Co.		"	745.00	New York City
3495	Hughes & Co.		"	265.60	New York City
3495	Hughes & Co.		"	555.72	Oakland, Cal.
4682	Columbia Steel Co.	5,805,964#	Trestle Steel	214,820.67	Gary, Ind.
5313	Columbia Steel Co.	3,886,766#	Trestle Steel	143,810.34	Gary, Ind.
3497	Jeffrey Mfg. Co.	6	Idlers	1,020.00	Columbus, O.

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3497	Jeffrey Mfg. Co.		Conveyor Pts.	2,221.48	Columbus, O.
3497	Jeffrey Mfg. Co.		Conveyor Pts.	2,334.50	Columbus, O.
3497	Jeffrey Mfg. Co.		Conveyor Pts.	377.24	Columbus, O.
3497	Jeffrey Mfg. Co.		Conveyor Pts.	37.50	Columbus, O.
3497	Jeffrey Mfg. Co.		Conveyor Pts.	90.68	Columbus, O.
3497	Jeffrey Mfg. Co.		Conveyor Pts.	87.00	Columbus, O.
3497	Jeffrey Mfg. Co.		Conveyor Pts.	370.97	Columbus, O.
3497	Jeffrey Mfg. Co.		Conveyor Pts.	90.00	Columbus, O.
3501	Pac. Mach. & Tool Steel Co.	19	Bits	13.42	Portland, Ore.
3505	Remington Rand, Inc.		Carbon Paper	4.22	Bridgeport, Conn.
3520	Chase Brass & Copper Co.	56#	Brass	13.26	Waterbury, Conn.
3527	Marshall-Wells Co.		Hardware	43.86	Worcester, Mass.
3573	Columbia Steel Company	2,776#	Steel	78.98	Portland, Ore.
3573	Columbia Steel Company	63,329#	Steel	1,842.49	Portland, Ore.
3600	Harnischfeger Sales Corp.		Elec. Sup.	20.72	Milwaukee, Wis.
3622	Crucible Steel Co.	62,315#	Steel	6,543.08	Pittsburgh, Pa.
3630	J. A. Roebling's Sons Co.	1,200#	SF Steel mesh	481.92	San Fran., Cal.
3630	J. A. Roebling's Sons Co.	285	SF Steel mesh	(red) 114.46	San Fran., Cal.
3660	Monarch Forge & Mach. Wks.	2	Pinions	330.00	Portland, Ore.
3675	Balser Mach. Co.	1,000'	Belt	6,989.26	Youngstown, O.
			Total	899,390.91	

[fol. 82] AFFIDAVIT OF ARNOLD HANGER

STATE OF WASHINGTON,
County of Spokane, ss:

Arnold Hanger, being first duly sworn, on his oath, says: I am the treasurer and a substantial shareholder of the Silas Mason Company and also of the Mason-Hanger Company, and have been such treasurer at all times since the Silas Mason Company participated with the Walsh Construction Company and the Atkinson-Kier Company in entering into the contract with the United States on July 16, 1934, for the construction of the Grand Coulee Dam.

The Silas Mason Company was organized by the shareholders of the Mason-Hanger Company, comprised chiefly of members of the Mason and Hanger families in 1926, but members of the Mason and Hanger families have been associated in the contracting business either as the Mason-Hanger Company or as Mason and Hanger since 1830. Ever since the organization of the Silas Mason Company it has been in close affiliation with the Mason-Hanger Company, the two companies having the same officers and substantially the same stockholders. Ever since the Silas Mason Company was organized, and, during all of said time and for many years prior thereto, the Mason-Hanger Company and the Silas Mason Company have both had their headquarters in New York City and Lexington, Kentucky, and have carried on a general contracting business chiefly in the northeastern part of the United States. The nature and character of their work and its location is indicated by their chief contracts during the past ten years, which are as follows: In 1928 the Silas Mason Company built pier foundations pursuant to a $2,000,000 contract, with headquarters in New Jersey, for a bridge across the Hudson River, and in the same year was engaged on a compressed air tunnel job for $200,000 in Philadelphia. In the year 1932 the Silas Mason Company completed a vehicular tunnel in Boston under a $5,000,000 contract. The Mason-Hanger Company and the Silas Mason Company [fol. 83] are still engaged in building the Midtown Hudson Tunnel connecting Manhattan and Weehawken for a contract price of approximately $7,000,000. In 1934-5 the Silas Mason Company became associated with the Walsh Con-

struction Company in the construction of a dam at Fort Peck, Montana. This was an $8,000,000 job and the Silas Mason Company finished its participation therein in 1935. This has been the first time it engaged in any contract so far west.

July 16, 1934, it associated itself with the Walsh Construction Company and with the Atkinson-Kier Company in entering into a contract with the United States Government above referred to, and thereupon joined with its co-contractors in forming Mason-Walsh-Atkinson-Kier Company as an agency of the three companies in doing the work on the Grand Coulee dam project.

The Silas Mason Company has transacted no business in the state of Washington other than through its corporate agent, Mason-Walsh-Atkinson-Kier Company and, as the Silas Mason Company continues its extensive operations in contracting at its offices in New York City and in Lexington, Kentucky, I am the only corporate officer of the Silas Mason Company at the Coulee Dam project and am obliged to divide my time here with time spent at the principal offices of the Silas Mason Company. I am not even temporarily residing in the state of Washington but merely make trips at intervals of three or four months to Mason City for the purpose of going over matters with the officials of the Mason-Walsh-Atkinson-Kier Company, who are performing the contract.

Neither the Silas Mason Company nor the Mason-Walsh-Atkinson-Kier Company have bid upon or accepted any other contracts within the state of Washington, and it is contemplated that when the Grand Coulee contract is completed the Mason-Walsh-Atkinson-Kier Company will have served its purpose and will not continue in business. The Silas Mason Company will continue its business at its headquarters in New York and in Lexington and has no plan or expectation of bidding upon any other work or of engag- [fol. 84] ing in any business at any time in the state of Washington, save and except as other work in connection with the Grand Coulee project may be awarded to the Mason-Walsh-Atkinson-Kier Company or some one or more of its stockholders by the United States Government.

(Subscribed and sworn to.)

[fol. 85] AFFIDAVIT OF THOMAS J. WALSH, JR.

STATE OF WASHINGTON,
County of Okanogan, ss:

Thomas J. Walsh, Jr., being first duly sworn, on his oath, says: My father, Thomas J. Walsh Sr., is the president and chief executive officer of the Walsh Construction Company, one of the companies which, on the 16th day of July, 1934, entered into a contract with the United States Government for the construction of Grand Coulee dam. I make this affidavit solely because there is no officer of the Walsh Construction Company within the state of Washington and because I am familiar with the facts herein set forth. I have no official position or connection with the Walsh Construction Company and am employed at Mason City as foreman of the Mason-Walsh-Atkinson-Kier Company.

The Walsh Construction Company has been engaged in business for the past 25 or 30 years, with its home office at Davenport, Iowa, and in later years has had a branch office at Indianapolis, Indiana, Los Angeles, California, and Syracuse, New York. It established an office in Los Angeles because it bid upon and was successful in obtaining a contract for the construction of a water system for the Metropolitan Water District of Los Angeles, which contract is still unfinished. The only other business it has engaged in in the far west was in association with the Silas Mason Company when the two companies joined in bidding on and received a contract from the United States government for the construction of a dam at Fort Peck, which it finished in 1935. Other than these two jobs, its contracting work has chiefly been in railroad construction east of the Mississippi. Its last big jobs were for the New York Central, a $5,000,000 contract, for grading its road bed, and another job for the Delaware and Lackawanna, involving $1,500,000, of a similar nature. I mention these two contracts because they are typical of the work it has done throughout its corporate existence.

[fol. 86] At no time has the Walsh Construction Company engaged in any business in the state of Washington and it maintains no office in the state of Washington. So far as participating in the performance of the contract of July 16, 1934, for the construction of the Grand Coulee dam, its

participation in this work is solely through its corporate agent, the Mason-Walsh-Atkinson-Kier Company, of which my father, Thomas J. Walsh Sr., is president. The Walsh Construction Company has no plan or expectation of bidding upon any other work or engaging in any business at any time in the state of Washington.

(Subscribed and sworn to.)

[fol. 87] AFFIDAVIT OF GEORGE H. ATKINSON

STATE OF WASHINGTON,
County of Okanogan, ss:

George H. Atkinson, being duly sworn, on his oath, says: I am one of the members of the partnership known as the Atkinson-Kier Company, which partnership consists of Guy F. Atkinson, George H. Atkinson, William E. Kier and Elmer L. Kier. The co-partnership of Atkinson-Kier Company was formed by the above mentioned four men solely for the purpose of participating in bidding upon and entering into a contract with the United States government on July 16, 1934, for the construction of the Grand Coulee dam. Said partnership has at no time and does not now have any other business than the participation in the performance of said contract, which it conducts only through its corporate agent Mason-Walsh-Atkinson-Kier Company. When the Mason-Walsh-Atkinson-Kier Company completes said contract it is contemplated by the partners that the partnership of Atkinson-Kier Company will be dissolved.

The partnership consisting of Guy F. Atkinson and George H. Atkinson, heretofore doing business under the firm name of Guy F. Atkinson Company, ever since its establishment, had its chief office at San Francisco. It was dissolved December 28, 1935, and was succeeded by a corporation, operating under the same name, which corporation will continue its contracting business chiefly from its headquarters at San Francisco. The partnership transacted its business chiefly in the state of California, with some business in Oregon.

(Subscribed and sworn to.)

[fol. 88] AFFIDAVIT OF WM. E. KIER

STATE OF WASHINGTON,
County of Okanogan, ss:

William E. Kier, being duly sworn, on his oath, says: I am one of the members of the partnership known as the Atkinson-Kier Company, which partnership consists of Guy F. Atkinson, George H. Atkinson, William E. Kier and Elmer L. Kier. The co-partnership of Atkinson-Kier Company was formed by the above mentioned four men solely for the purpose of participating in bidding upon and entering into a contract with the United States government on July 16, 1934, for the construction of the Grand Coulee dam. Said partnership has at no time and does not now have any other business than the participation in the performance of said contract, which it conducts only through its corporate agent, Mason-Walsh-Atkinson-Kier Company. When the Mason-Walsh-Atkinson-Kier Company completes said contract it is contemplated by the partners that the partnership of Atkinson-Kier Company will be dissolved.

The partnership consisting of William E. Kier and Elmer L. Kier has been engaged for a number of years in the contracting business and during all of said period has had its chief office at San Diego, California, where it continues to transact its business as such co-partnership. That co-partnership of late years has transacted practically all of its business in California and Arizona, although in earlier years it did contracting work in Wyoming and Arkansas and certain other Southern states, as well as California and Arizona.

(Subscribed and sworn to.)

[fol. 89] DEFENDANTS' EVIDENCE

At the conclusion of plaintiffs' showing, the defendants filed their motion to dismiss the complaint, and offered in evidence and the court thereupon received in evidence a certified copy of the rules and regulations of the Tax Commission of the state of Washington, adopted October 16th, 1935, relating to Title IV, Chapter 180, Laws of Washing-

ton of 1935, the only material portions of which rules and regulations are set forth in paragraph 6 of the complaint herein and in Supplemental Finding of Fact No. II heretofore filed in the above cause. The defendant thereupon rested and took said application for interlocutory injunction under advisement.

At the hearing on said application for an interlocutory injunction, plaintiffs introduced no evidence in support of the contention made by them in paragraph 9, subdivision "h" of the complaint, wherein it is alleged that the said compensating tax provided for in Title IV, Chapter 180, Session Laws of Washington of 1935, is not collectible from plaintiffs by reason of the alleged ownership by the United States of the land whereon said dam is being constructed, and at said hearing the attorney for plaintiffs stated in open court that plaintiffs made no claim that said plaintiffs were entitled to an interlocutory injunction in the above cause by reason of the alleged facts set forth in said paragraph 9, subdivision "h", but that plaintiffs would submit evidence in support of their prayer for a permanent injunction, but not otherwise.

Wherefore defendants pray that the above statement of evidence be settled, approved and allowed by the above-entitled court as a true, full, correct and complete statement of all of the evidence necessary for a review of the rulings assigned as error on the appeal of said defendants taken and given on the hearing of said application for an interlocutory injunction and the order to show cause entered June 5, 1936, pursuant to said application, for use on the appeal of said defendants from the order for inter- [fol. 90] locutory injunction entered in the above cause against the defendants on September 16th, 1936, taken to the Supreme Court of the United States.

Dated this 21st day of September, 1936.

G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants.

[fol. 91] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO STATEMENT OF EVIDENCE

It is hereby stipulated and agreed by and between counsel for plaintiffs and counsel for defendants that the foregoing proposed statement of the evidence is a true, full, correct and complete statement of all of the evidence necessary for a review of the rulings assigned as error on the appeal of said defendants taken and given on the hearing of said application for an interlocutory injunction and the order to show cause entered on June 5, 1936, pursuant to said application, for use on the appeal of said defendants from the order for interlocutory injunction entered in the above cause against the defendants on September 16th, 1936, taken to the Supreme Court of the United States; that said plaintiffs hereby waive notice of the lodgement thereof with the clerk of the above court as provided by Equity Rule 75, or any notice thereof whatever, and hereby consent that said proposed statement of the Evidence may be approved by the Court on the form of order thereto attached, without further or any notice to said plaintiffs or their attorneys.

Dated this 21st day of September, 1936.

Graves, Kizer and Graves, Attorneys for Plaintiffs.
W. G. Graves and B. H. Kizer, Solicitor for Plaintiffs. G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants.

[fol. 92] IN UNITED STATES DISTRICT COURT

ORDER APPROVING STATEMENT OF EVIDENCE

On this day came on for consideration the matter of the approval of the Statement of the Evidence lodged by the defendants, and it appearing to the Court that the plaintiffs and defendants have stipulated that said Statement is true, complete and properly prepared, and that the same may be approved by this form of order without notice to the plaintiffs or their attorneys as required by Equity Rule 75 or at all, and it further appearing that such statement is true, complete and properly prepared, It is Ordered by the Court that the same be and is hereby approved as part

of the record herein, for the purpose of the appeal of said defendants to the United States Supreme Court from the order granting interlocutory injunction entered herein September 16th, 1936.

Done in open court this 21st day of September, 1936.

J. Stanley Webster, District Judge.

Approved as to form and substance:

Graves, Kizer and Graves, Attorneys for Plaintiffs.

W. G. Graves and B. H. Kizer, Solicitor- for Plaintiffs. G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants.

[fol. 93] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed September 21, 1936

To the Clerk of the Above Court:

You are hereby requested to make a transcript of record to be filed in the United States Supreme Court pursuant to the appeal allowed in the above-entitled cause, and to include in such transcript of record the following, and no other, papers and exhibits, to-wit:

1. Complaint;
2. Application for interlocutory injunction;
3. Order to show cause on application for interlocutory injunction;
4. Order assembling three-judge court;
5. Notice to Governor, etc.;
6. Defendants' motion to dismiss action;
7. Minute entry as to hearing on application for interlocutory injunction;
8. Opinion and dissenting opinion on application for interlocutory injunction;
9. Plaintiffs' motion that opinion be adopted as findings of fact and conclusions of law, etc.;
10. Findings of Fact and Conclusions of Law;

11. Defendants' exceptions to Findings of Fact and Conclusions of Law;
[fol. 94] 12. Order for interlocutory injunction;
13. Defendants' petition for appeal;
14. Order allowing appeal;
15. Defendants' assignments of errors:
16. Cost bond on appeal;
17. Citation on appeal;
18. Statement of jurisdiction;
19. Statement and proof of service of appeal papers;
20. Statement of Evidence;
21. Præcipe for transcript of record;
22. Appellees' Waiver of Objections to Jurisdiction.

Said transcript to be prepared as required by law and the rules of the Supreme Court of the United States, and to be filed in the office of the clerk of said last-named court, together with the original citation on or before November 20th, 1936, or such additional time as is allowed therefor.

Dated this 21st day of September, 1936.

G. W. Hamilton and R. G. Sharpe, Attorneys for Defendants. Graves, Kizer and Graves, Attorneys for Plaintiffs. W. G. Graves and B. H. Kizer, Solicitor- for Plaintiffs.

[fols. 95-98] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 99] IN SUPREME COURT OF THE UNITED STATES

APPELLANTS' STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed October 9, 1936

Points Relied Upon by Appellants

Appellants intend to rely upon the following points as ground for the reversal of the order granting an interlocutory injunction from which the appeal is taken:

(1) Title IV, Chapter 180, Laws of Washington of 1935, imposes upon every person in the state of Washington a

tax or excise for the privilege of using within said state any article of tangible personal property purchased subsequent to April 30, 1935, equal to 2% of the purchase price thereof plus costs of transportation to place of use, with an off-set of any use or sales tax paid thereon either in Washington or in any other state. The order appealed from adjudges the provisions of said statute are null and void and the tax imposed thereby is illegal and unenforceable as against appellees, and grants an interlocutory injunction restraining appellants, both individually and as the Tax [fol. 100] Commission of the state of Washington, during the pendency of said suit from enforcing or attempting to enforce the collection of said tax from appellees.

The district court erred in entering said order in that the same was based upon the sole but erroneous ground that said state statute and the tax thereby imposed, as measured by the purchase price and transportation costs of tangible personal property purchased by appellees outside of Washington and transported into and used by appellees in Washington, constitutes an unlawful burden on interstate commerce in violation of the commerce clause of the federal constitution.

(2) The district court erred in finding and concluding that the tax imposed by said state statute is, in effect, a tax upon purchases of materials made by persons within Washington, and within other states of the Union, whereas such tax is in truth and in fact a tax, not upon the purchase, but upon the use of such materials within the state of Washington.

(3) The court erred in finding and concluding that the tax imposed by said state statute was intended to and does discriminate against articles brought into Washington from other states in order to remove any competition with merchants of the state of Washington, whereas the record fails to show that any such discrimination was either intended or in fact exists.

(4) The court erred in finding and concluding that the tax imposed by said state statute is violative of the commerce clause of the federal constitution in that the tax is discriminating in its incidents against articles because of their origin in other states than Washington and that said statute was framed for the purpose of suppressing com-

petition from without the state of Washington, whereas the record fails to show any such discrimination or purpose either in the enactment of such state statute, or in the im-
[fol. 101] position of such tax.

Part of Record to be Printed

Appellants state that the whole of the record sent up from the District Court of the United States for the Eastern District of Washington, Northern Division, in accordance with the praecipe filed in said court jointly by appellants and appellees on or about September 21, 1936, is necessary for the consideration of the case.

Dated this 7th day of October, 1936.

G. W. Hamilton and R. G. Sharpe, Attorneys for Appellants.

[fol. 102] State of Washington,
County of Thurston, ss:

Orris L. Hamilton, being first duly sworn, on oath, deposes and says: That at all times herein mentioned affiant was and now is a citizen of the United States and of the state of Washington in no wise interested in the within entitled cause or appeal and competent to be a witness therein; that on the 7th day of October, 1936, affiant served the within and attached "Appellants' Statement of Points Relied Upon and Designation of Parts of Record to be Printed" upon the within named appellees, by depositing a true and correct copy thereof in the United States postoffice at Olympia, Washington, securely wrapped and with first-class postage thereon fully prepaid and plainly addressed to: "Messrs. Graves, Kizer and Graves, and Mr. W. G. Graves and Mr. B. H. Kizer, Attorneys at Law, Old National Bank Building, Spokane, Washington," said addressees being then and there the attorneys and solicitors for appellees in the within entitled appeal, and said address being then and there the business and postoffice address of each and all of said addressees.

Orris L. Hamilton.

Subscribed and sworn to before me this 7th day of October, 1936.

Harry L. Parr, Notary Public in and for the State of Washington Residing at Olympia. (Seal.)

[fol. 103] [File endorsement omitted.]

Endorsed on cover: Enter R. G. Sharpe. File No. 40,958. E. Washington, D. C. U. S. Term No. 418. Harold H. Henneford, Thomas S. Hedges and T. M. Jenner, Members of the Tax Commission of the State of Washington, appellants, vs. Silas Mason Company, Inc., Walsh Construction Company, Guy F. Atkinson, et al. Filed September 30, 1936. Term No. 418, O. T., 1936.

(8378-C)